

**Report 201G**

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

**RECOMMENDATION**

1 RESOLVED, that the American Bar Association adopts the proposed *Model Rule on Admission*  
2 *by Motion*, dated August 2002:

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4 **Model Rule on Admission by Motion**

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6 1. An applicant who meets the requirements of (a) through ~~(h)~~ (g) of this Rule may, upon  
7 motion, be admitted to the practice of law in this jurisdiction.

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9 The applicant shall:

10 (a) have been admitted to practice law in another state, territory, or the District of  
11 Columbia;

12 (b) hold a first professional degree in law (J.D. or LL.B.) from a law school approved by  
13 the Council of the Section of Legal Education and Admissions to the Bar of the American  
14 Bar Association at the time the graduate matriculated;

15 (c) have been primarily engaged in the active practice of law in one or more states,  
16 territories or the District of Columbia for five of the seven years immediately preceding  
17 the date upon which the application is filed;

18 (d) establish that the applicant is currently a member in good standing in all jurisdictions  
19 where admitted;

20 (d) establish that the applicant is not currently subject to lawyer discipline or the subject  
21 of a pending disciplinary matter in any other jurisdiction;

22 (e) establish that the applicant possesses the character and fitness to practice law in this  
23 jurisdiction; and

24 (f) designate the Clerk of the jurisdiction's highest court for service of process.  
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26 2. For the purposes of this rule, the "active practice of law" shall include the following  
27 activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a  
28 jurisdiction that affirmatively permits such activity by a lawyer not admitted to practice;  
29 however, in no event shall activities listed under (2)(e) and (f) that were performed in advance of  
30 bar admission in the jurisdiction to which application is being made be accepted toward the  
31 durational requirement:

- 32 (a) Representation of one or more clients in the practice of law;
- 33 (b) Service as a lawyer with a local, state, [territorial](#) or federal agency, including military
- 34 service;
- 35 (c) Teaching law at a law school approved by the Council of the Section of Legal
- 36 Education and Admissions to the Bar of the American Bar Association;
- 37 (d) Service as a judge in a federal, state, territorial or local court of record;
- 38 (e) Service as a judicial law clerk; or
- 39 (f) Service as corporate counsel.

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41 3. For the purposes of this Rule, the active practice of law shall not include work that, as

42 undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was

43 performed or in the jurisdiction in which the clients receiving the unauthorized services were

44 located.

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46 4. An applicant who has failed a bar examination administered in this jurisdiction within five

47 years of the date of filing an application under this rule shall not be eligible for admission on

48 motion.

## REPORT

At one time, lawyers tended to maintain their law offices in a single jurisdiction over the course of their entire legal careers because of the local nature of law practice. Today, in contrast, geographic mobility is unexceptional. Lawyers move from one state to another in order to continue to serve clients who are relocating or to better serve clients that function outside the state, for personal reasons, for career advancement, or for a host of other reasons. Lawyers change law firms or employers, or simply reestablish their individual practices in different jurisdictions. Lawyers in large law firms move from one office of their firm to another. Lawyers employed by corporations move from one corporate office to another.

Jurisdictional restrictions impede national mobility, because in many cases the process for admitting lawyers to practice law in a new jurisdiction is lengthy, expensive, and burdensome. Some states subject a lawyer who is already licensed and experienced in legal practice to the process designed for admitting new law school graduates. The practicing lawyer is required to take the state bar examination and, upon receiving a passing grade, to undergo character and fitness review.

Although the primary concern in the submissions to the Commission has been the application of UPL restrictions to United States lawyers' occasional practice in jurisdictions in which they do not maintain an office, the Commission has also received submissions focusing on the difficulty of establishing a law practice in a new jurisdiction.<sup>1</sup>

A number of states facilitate the admission of experienced lawyers who are moving their law practice by allowing them to gain admission to the bar without sitting for the bar examination, if they demonstrate that they have been in active law practice in another jurisdiction for a specified period of time and are members in good standing of the other jurisdiction's bar.<sup>2</sup> The admission on motion processes in these states recognize the reality that

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<sup>1</sup>See, e.g., J. Eric Schaal, Associate General Counsel, USG Corporation, letter dated January 8, 2002 to the ABA Commission on Multijurisdictional Practice, [www.abanet.org/cpr/mjp/comm2\\_usg.html](http://www.abanet.org/cpr/mjp/comm2_usg.html).

<sup>2</sup>See, e.g., Alaska Bar Rule 2, Section 2 (applicant must have passed bar in at least one jurisdiction and have engaged in active practice of law five of seven years preceding date of application in state that offers reciprocal admission to Alaska lawyers, provided conditions are not more demanding than those in Alaska, and pay a non-refundable fee); Colorado Admission Rule 201.3(1) (admits applicants actively and substantially engaged in the practice of law for five of seven years preceding application in state providing reciprocal admission without exam to members of the Colorado Bar); Connecticut Rules of the Superior Court Regulation Admission to the Bar, Sec. 2-13 (applicant must have practiced law in a reciprocal jurisdiction for at least five of seven years preceding date of application, be in good standing, have good moral character and have passed an examination in professional responsibility or completed a course in professional responsibility, intend to practice law on a continuing basis and devote a major portion of work time to practicing law in Connecticut, and file a fee and affidavits regarding character, education and disciplinary record); Illinois Admission Rule 705 (applicant must meet educational, character and fitness requirements for Illinois attorneys, pass the Multistate

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Professional Responsibility Examination, practice continuously five of seven years in jurisdiction offering reciprocity, and pay fee for admission on foreign license); Missouri Supreme Court Rules Governing the Missouri Bar, Rule 8.10 (applicant must have graduated from an ABA approved law school and be licensed and actively practicing five of preceding ten years in at least one jurisdiction offering mutuality of admission without examination; applicant must also meet continuing education requirements, pay a non-refundable fee, file a form for a character and fitness report and file various affidavits regarding work experience and good moral character); New York, Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law, Section 520.10 (applicant must have been admitted to practice in highest law court in a state or territory of the United States or in another country whose jurisprudence is based upon the principles of the English Common Law and be admitted to the bar of a jurisdiction that would similarly admit New York lawyers without examination; in addition, the applicant must be over 26 years of age, possess a first degree from approved law school, have practiced five of preceding seven years, pay a fee and submit to other tests of character and fitness at discretion of Appellate Division); North Carolina Supreme Court Rules Governing Admission to the Practice of Law Section .0502 (applicant must be in good standing in every state in which applicant is licensed, have active practice four of preceding six years in a state providing comity admission for North Carolina lawyers, supply complete background information, pay nonrefundable fee of \$1500, establish good moral character, pass the Multistate Professional Responsibility Examination, and supply various types of documentation including certificates of moral character, a recent photograph and fingerprints; applications are not considered until at least six months after the date of filing); Oklahoma Rules Governing Admission to the Practice of Law, Rule 2 (applicant must have graduated from an ABA-approved law school, show good moral character, have practiced five of seven preceding years and be in good standing in a reciprocal jurisdiction, and provide at applicant's expense a report by the National Conference of Bar Examiners; if rules of reciprocal admission and fees in applicant's former jurisdiction are more stringent for admitting Oklahoma lawyers, applicant shall be governed by the more stringent standards); Pennsylvania Bar Admission Rule 204 (applicants must have graduated from an ABA-approved law school, practiced for five of preceding seven years in a reciprocal jurisdiction, passed the Multistate Professional Responsibility Examination and meet various other conditions); Virginia Supreme Court Rule 1A:1 (application must be filed under oath with a certificate saying lawyer has been licensed for at least five years; applicant must also complete character and fitness questionnaire, furnish report of the National Conference of Bar Examiners upon request, and pay \$500 filing fee; thereafter, the Board will determine whether applicant has established an intention to practice full time as a member of the Virginia Bar and whether applicant "has made such progress in the practice of law that it would be unreasonable to require the applicant to take an examination"); Washington Admission to Practice Rule 18 (admission of lawyers from jurisdictions with substantially similar conditions for admitting Washington lawyers, upon proof of admission to practice, current good standing, active legal practice, moral character and fitness, and payment of a filing fee; if the jurisdiction that licensed the applicant requires Washington lawyers to meet other conditions, the applicant must meet a substantially similar requirement); West Virginia Supreme Court of Appeals Rules for Admission, Rule 4.0-4.5 (applicant must demonstrate intention to practice in West Virginia on at least a minimal basis, have practiced five of last seven years, hold valid license from state in which admissions standards are substantially equivalent to standards in West Virginia, show proof of good moral character and submit

lawyers who have been admitted to another state's bar and have practiced actively for a significant period of time without disciplinary sanction are qualified to establish a law practice in the new state, and that, for experienced lawyers, the bar examination therefore serves as an unnecessary obstacle to establishing a practice in the new state. This is particularly true because, with the advent of multi-state bar examinations, most bar examinations have become increasingly less distinctive and less focused on the idiosyncrasies of individual states' law. There is nothing to suggest that in states with admission on motion, particular regulatory problems are disproportionately presented by lawyers who gain admission by this process.

Further, as urged by the ABA Section of Legal Education and Admissions to the Bar, it is worthwhile to attempt to distill and standardize the criteria used by states that employ streamlined admissions processes.<sup>3</sup> Accordingly, the Commission recommends that the ABA adopt the *Model Rule on Admission by Motion* developed by the ABA Section of Legal Education and Admissions to the Bar. It should be understood that admission on motion is not an alternative to the multijurisdictional practice standards in proposed Rule 5.5 of the *Model Rules of Professional Conduct*, since no lawyer can realistically be admitted to every state bar, even on motion. The motion rules are directed at those lawyers who expect to relocate their practices or to practice regularly in two or more jurisdictions.

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affidavits of good character from at least two lawyers, pass the MPRE, provide records of criminal, disciplinary and civil proceedings, and pay application fee); Wisconsin Supreme Court Rule 40.05 (reciprocity for applicants admitted in jurisdictions that grant similar admission to Wisconsin lawyers and recognize Wisconsin's diploma privilege and applicant must have practiced for three of preceding five years); Wyoming Statute 33-5-110 (admits foreign attorneys who have been awarded a J.D. or LL.B. from an ABA-approved law school, engaged in practice five of prior seven years in a reciprocal jurisdiction, upon presentation of certificate of admission to that state and upon a showing of qualification, character and fitness to practice law). *cf.* Maryland Code Sec.10-210 and Rule 13, Maryland Rules Governing Admission to Bar.

<sup>3</sup>See Counsel of the Section of Legal Education and Admissions to the Bar, Memorandum to the ABA Commission on Multijurisdictional Practice (Feb. 14, 2001), [http://www.abanet.org/cpr/mjp/comm2\\_leab.html](http://www.abanet.org/cpr/mjp/comm2_leab.html).

