



# Center for Professional Responsibility

## Cross-Border Representation of Your Client

By John A. Holtaway

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Prior to August 2002, Rule 5.5 of the ABA *Model Rules of Professional Conduct* specifically stated that “a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction” and, with the possible exceptions of the District of Columbia, Michigan and Virginia, only lawyers licensed to practice law in a particular jurisdiction were authorized to practice in that jurisdiction, absent *pro hac vice* admission. In August 2002, the American Bar Association House of Delegates approved amendments to Model Rule 5.5. Amended Rule 5.5 now authorizes lawyers to engage in the multijurisdictional practice of law in certain circumstances.

Amended Rule 5.5(c) delineates four circumstances in which out-of-state lawyers are authorized to engage in the unlicensed practice of law on a temporary basis. An out-of-state lawyer may provide legal services:

- (1) in association with a lawyer licensed to practice law in the jurisdiction;
- (2) related to a potential or pending court proceeding if the lawyer, or a person the lawyer is assisting, is authorized to appear or reasonably expects to be authorized to appear in the proceeding;
- (3) related to a potential or pending alternative dispute resolution proceeding in the jurisdiction or another jurisdiction, if the services arise out of or are reasonably related to the lawyer’s practice in the jurisdiction where the lawyer is licensed to practice law and are not legal services requiring *pro hac vice* admission; and
- (4) arising out of or reasonably related to the lawyer’s practice of law in a jurisdiction in which the lawyer is licensed to practice law.

Amended Rule 5.5(d) describes two situations in which out-of-state lawyers are authorized to engage in the unlicensed practice law on a permanent basis. An out-of-state lawyer may provide legal services:

- (1) to the lawyer’s employer or its organizational affiliates (as in the case of in-house counsel) if the forum does not require *pro hac vice* admission for those services; and
- (2) that the lawyer is authorized to provide by federal law.

In exchange for being allowed to engage in the authorized unlicensed practice of law, an out-of-state lawyer, by providing legal services or offering to provide legal services, is subject to the lawyer disciplinary authority and the rules of professional conduct of the jurisdiction where the lawyer is being permitted to practice without being licensed there.

As of today, the highest courts in thirty-two United States jurisdictions have amended their rules of professional conduct to allow the authorized unlicensed practice of law or the

multijurisdictional practice of law. Unfortunately, for legal practitioners, the highest courts in only eleven U.S. jurisdictions have adopted a rule identical to ABA Model Rule 5.5. It is imperative that lawyers, contemplating engaging in the authorized unlicensed practice of law, determine exactly what legal services they may or may not provide in a jurisdiction in which they are not otherwise licensed to practice law and what, if any, requirements they must meet prior to beginning the representation of their clients.

For legal matters that do not require *pro hac vice* admission, three United States jurisdictions, Nevada, New Jersey and South Carolina, require out-of-state lawyers to register with a designated agency and pay a fee in order to engage in the authorized unlicensed practice law. In Florida, out-of-state lawyers only have to register and pay a \$250 fee in domestic arbitration proceedings. North Dakota requires association with a lawyer licensed to practice law in North Dakota for transactions that are pending in or substantially related to North Dakota and for which *pro hac vice* admission is not available. In South Dakota, out-of-state lawyers must obtain a South Dakota sales tax license and tender the applicable taxes. Finally, for those lawyers engaging in the authorized unlicensed practice of law as in-house counsel, which is permitted by ABA Model Rule 5.5(d)(1), there are now thirty-one United States jurisdictions that require registration, often the payment of a fee and, in some jurisdictions, up to forty-five hours of continuing legal education every three years.

While amended ABA Model Rule 5.5 is generally intended to allow lawyers to represent their clients in transactional matters in a jurisdiction in which the lawyer is not otherwise admitted to practice law, there are other admission to practice rules that allow temporary practice across borders. One such rule is *pro hac vice* admission (an out-of-state lawyer may be admitted to practice law in a local jurisdiction for a particular case only). Every jurisdiction in the United States has some form of a *pro hac vice* admission rule. The *ABA Model Rule on Pro Hac Vice Admission* applies to court, alternative dispute and administrative agency proceedings. The ABA Model Rule requires the filing of a verified application, the payment of an application fee determined by the lawyer regulatory authority, and association with local counsel, but does not limit the number of times an out-of-state lawyer may file a *pro hac vice* application in a local jurisdiction. Unfortunately, the requirements for *pro hac vice* admission are not uniform across the country, and as with all multijurisdictional practice rules, you must consult the rule of the jurisdiction in which you seek to provide temporary legal services to your client.

For those lawyers considering accepting a position as in-house counsel, you will want to review ABA Model Rule 5.5(d)(1), summarized above. While Rule 5.5(d)(1) explicitly allows in-house counsel to provide legal services, many United States jurisdictions have adopted a separate in-house counsel registration rule that requires in-house counsel to register on an annual basis, pay an annual registration fee and, in some jurisdictions comply with continuing legal education requirements. In addition, an in-house counsel who seeks to represent his or her employer before a tribunal in the local jurisdiction may or may not be allowed to do so depending on the provisions of the local jurisdiction's *pro hac vice* admission rule. Finally, if you wish to be employed as in-house counsel in a jurisdiction in which you are not otherwise licensed to practice law, or if you have a client for whom you will be providing legal services on a systematic and continuous basis in a jurisdiction in which you are not otherwise authorized to practice law, you may become admitted to practice law in the local jurisdiction by sitting for and

passing the jurisdiction's bar examination or possibly through the jurisdiction's version of the *ABA Model Rule on Admission by Motion*.

The *ABA Model Rule on Admission by Motion*, a version of which has been adopted in thirty-eight United States jurisdictions, allows a lawyer, who meets certain pre-existing conditions, to be admitted to practice law in a jurisdiction in which the lawyer is not otherwise authorized to practice law. The admission by motion process recognizes that lawyers who have been admitted to practice law for a designated period of time in another jurisdiction, and have not been subject to lawyer discipline, are qualified to practice law on a regular basis in the local jurisdiction.

In the summer of 2005, Alabama, Louisiana and Mississippi were devastated by Hurricanes Katrina and Rita. The physical damage done in those jurisdictions was catastrophic but the storms also damaged and crippled their legal systems. In February 2007, the American Bar Association House of Delegates adopted the *Model Court Rule on Provision of Legal Services Following Determination of Major Disaster*. The Model Court Rule provides that, after the highest court in an affected jurisdiction, or in another jurisdiction to which displaced persons temporarily relocate, determines that an emergency exists that affects the jurisdiction's justice system and the provision of legal services, the Court may allow (1) out-of-state lawyers to provide *pro bono* legal services to the citizens of the affected jurisdiction within certain constraints described in the Model Rule, and; (2) lawyers from an affected jurisdiction can provide legal services in an unaffected jurisdiction on a temporary basis if these services are reasonably related to the lawyer's practice in the affected jurisdiction.

Additional resources about the [multijurisdictional practice of law](#).

*John A. Holtaway is Lead Senior Counsel at the American Bar Association Center for Professional Responsibility, where he directs all work to fulfill the Association's goals to develop and strengthen client protection mechanisms, programs for client-lawyer fee arbitration, mediation and to address issues related to the multijurisdictional practice of law and nonlawyer activity.*