April 17, 2002

Wayne J. Positan, Esq., Chair
Commission on Multijurisdictional Practice
American Bar Association
541 Fairbanks Court, 14th Floor
Chicago, IL 60611

Dear Mr. Positan:

The Energy Bar Association (EBA”) wishes to add its endorsement to the comments on the Interim Report of the Commission submitted on behalf of the Federal Communications Bar Association (“FCBA”) by S. White Rhyne, Esq., the FCBA’s Multijurisdictional Practice Liaison.

About the EBA

The EBA is an international, nonprofit association of attorneys active in all areas of energy law. Its membership consists of over 2000 members, principally government, corporate and private attorneys who provide representation or counsel on energy regulation and transactions under federal, state and foreign law. A significant proportion of the Association’s members deal with matters before the Federal Energy Regulation Commission, the Department of Energy, the Securities Exchange Commission, and the Environmental Protection Agency. EBA has chapters in Texas and the South Central, Midwest, East Central and Western regions of the United States. However, many EBA members are located in the District of Columbia due to the presence of the aforementioned federal agencies.

Multi-jurisdictional Practice

EBA members regularly are called upon by their clients to provide counsel or representation on matters affected by the law of jurisdictions in which they are not admitted to practice. A substantial number of EBA members represent clients that conduct business on a regional or national level such as electric utility systems, natural gas pipelines and power and natural gas marketers. In addition, many clients, including electric transmission companies and natural gas pipelines, own facilities that are federally regulated and that are located across several state lines. Such clients obtain the benefits of experience and economy by using a single attorney or firm to address common issues arising in different jurisdictions. Indeed, EBA members are often sought out because of their experience in addressing energy-specific issues
that have arisen in other states, as that experience informs their advice.

Moreover, energy issues often arise in contexts affected by both state and federal law. For example, EBA members may participate in the negotiation of, or in litigation with respect to, arrangements for the sale of electric energy or natural gas at wholesale. The pricing and terms and conditions of such arrangements are governed by federal law, but are embodied in contracts formed under the laws of a specific state. Similarly, the purchase and sale of utility assets implicates both federal and state law. Clients are protected by the energy attorney's obligation of competence and the ability to participate with local co-counsel as needed. Rules of professional conduct that unduly restrict counsel from offering their services to clients in other states compromise the quality and breadth of experience available to prospective clients and may create unnecessary diseconomies.

**EBA Supports FCBA Comments on the Interim Report**

The EBA strongly supports the alternative version of proposed Model Rule of Professional Conduct 5.5 sponsored by the FCBA, the ABA's Environment, Energy & Resources Section, the ABA's Law Practice Management, and other bar organizations. If that alternative is not accepted by the Commission, however, the EBA urges the Commission to modify the version proposed in the Interim Report as suggested in Mr. Rhyne's comments to the Commission dated February 1, 2002, which were presented at the Commission's recent hearing in Philadelphia, Pennsylvania. EBA believes that the FCBA proposal appropriately preserves the right of clients to choose the lawyers they deem best able to meet their needs, especially when those needs arise in connection with federal or other multi-jurisdictional or regional matters, as is typical in the energy industry.

Sincerely,

Paul E. Nordstrom
President

Julia R. Richardson
EBA Delegate to the ABA

cc: Commission Members
Commission Counsel