

APPENDIX A

Commission on Multijurisdictional Practice

Mission Statement

RESOLVED that the American Bar Association establish the Commission on the Multijurisdictional Practice to research, study and report on the application of current ethics and bar admission rules to the multijurisdictional practice of law. The Commission shall analyze the impact of those rules on the practices of in-house counsel, transactional lawyers, litigators and arbitrators and on lawyers and law firms maintaining offices and practicing in multiple state and federal jurisdictions. The Commission shall make policy recommendations to govern the multijurisdictional practice of law that serve the public interest and take any other action as may be necessary to carry out its jurisdictional mandate. The Commission shall also review international issues related to multijurisdictional practice in the United States.

APPENDIX B

American Bar Association Commission on Multijurisdictional Practice 2001-2002

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APPENDIX C

AMERICAN BAR ASSOCIATION

COMMISSION ON MULTIJURISDICTIONAL PRACTICE

Public Hearings

(As of 11/26/01)

| <u>Date</u> | <u>Event</u> | <u>Location</u> |
|--------------------|---------------------|------------------------|
| January 26, 2001 | MJP Public Hearing | Dallas, TX |
| February 16, 2001 | MJP Public Hearing | San Diego, CA |
| February 17, 2001 | MJP Public Hearing | San Diego, CA |
| March 30, 2001 | MJP Public Hearing | New York, NY |
| April 27, 2001 | MJP Public Hearing | Kansas City, MO |
| May 18, 2001 | MJP Public Hearing | Atlanta, GA |
| June 1, 2001 | MJP Public Hearing | Miami, FL |
| August 3, 2001 | MJP Public Hearing | Chicago, IL |

APPENDIX D

AMERICAN BAR ASSOCIATION

COMMISSION ON MULTIJURISDICTIONAL PRACTICE

Speaking Engagements/Programs/Business Meetings

(As of 11/26/01)

| <u>Date</u> | <u>Event</u> | <u>Location</u> |
|---------------------|--|--------------------|
| September 16, 2000 | MJP Business Meeting | Chicago, IL |
| September 22, 2000 | ABA Section Officers Conference | Chicago, IL |
| October 13, 2000 | MJP Business Meeting | Washington D.C. |
| October 26-28, 2000 | ABA Board of Governors | Tallahassee, FL |
| December 7, 2000 | Connecticut Bar Foundation MJP Symposium | New Britain, CT |
| December 15, 2000 | MJP Business Meeting | Teleconference |
| January 5, 2001 | ABA Section of Litigation Council Meeting | Jamaica |
| January 12, 2001 | NJSBA Board of Trustees Meeting | NJ |
| January 17, 2001 | NJSBA Meeting | Hunterdon Cnty, NJ |
| January 22, 2001 | Conference of Chief Justices | Baltimore, MD |
| January 27, 2001 | Business Meeting | Dallas, TX |
| February 16, 2001 | MJP Roundtable | San Diego, CA |
| February 16, 2001 | ABA Section Officers Conference | San Diego, CA |
| February 16, 2001 | ABA Section of International Law and Practice | San Diego, CA |
| February 17, 2001 | National Conf. of Bar Presidents | San Diego, CA |

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|-------------------|--|-------------------|
| February 17, 2001 | MJP Business Meeting | San Diego, CA |
| February 18, 2001 | National Caucus of State Bars | San Diego, CA |
| March 9-10, 2001 | Western States Bar Conference | Hawaii |
| March 16-17, 2001 | Vanderbilt Symposium- Transnational Lawyer | Memphis, TN |
| March 24, 2001 | Chief Justices Conference | Del Mar, CA |
| March 28, 2001 | ABA Section of Antitrust Law | Washington, D.C. |
| March 30, 2001 | MJP Business Meeting | New York, NY |
| March 31, 2001 | MJP Business Meeting | New York, NY |
| April 4, 2001 | Delaware State Bar Association Corporate Counsel Section | Wilmington, DE |
| May 5, 2001 | Beverly Hills Bar Association | Beverly Hills, CA |
| May 12, 2001 | ABA Section of Taxation | Washington D.C. |
| May 23, 2001 | Portland Cement Association (PCA) | Skokie, IL |
| May 31, 2001 | MJP Business Meeting | Miami, FL |
| June 1, 2001 | 27 th National Conference on Professional Responsibility | Miami, FL |
| June 2, 2001 | MJP Business Meeting | Miami, FL |
| June 6, 2001 | Delaware Bench and Bar Conference | Wilmington, DE |
| June 22, 2001 | International Council of Shopping Centers | Columbus, OH |
| July 23, 2001 | MJP Business Meeting | Chicago, IL |
| August 3, 2001 | MJP Business Meeting | Chicago, IL |
| August 4, 2001 | MJP Business Meeting | Chicago, IL |
| September 6, 2001 | Loyola Law School-MJP Seminar | Chicago, IL |

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|-------------------|--|------------------|
| October 2, 2001 | MJP Business Meeting | Teleconference |
| October 11, 2001 | MJP Business Meeting | Chicago, IL |
| October 12, 2001 | MJP Business Meeting | Chicago, IL |
| October 13, 2001 | ABA Section of International Law and Practice | Monterey, Mexico |
| October 26, 2001 | MJP Business Meeting | Teleconference |
| November 12, 2001 | MJP Business Meeting | Teleconference |
| November 26, 2001 | MJP Business Meeting | Teleconference |

APPENDIX E

AMERICAN BAR ASSOCIATION

Commission on Multijurisdictional Practice

Multijurisdictional Practice of Law

BIBLIOGRAPHY

Adams, Gregory B., *Reflections on the Reaction to Proposed Rule 8.5: Consensus or Failure*, 36 S. Texas L. Rev. 1101 (1995).

American Corporate Counsel Association, *States' Corporate Counsel Admission Rules* (Symposium on the Multijurisdictional Practice of Law, March, 2000)(www.abanet.org/cpr/mjp-home.html).

Attorneys' Liability Assurance Society, Inc., *Statutes and Rules Limiting Multijurisdictional Law Practice from 51 United States Jurisdictions* (Symposium on the Multijurisdictional Practice of Law, March, 2000)(www.abanet.org/cpr/mjp-home.html).

Aultman, Mark H., *A Post Conference Reflection: Does Amended Model Rule 8.5 Help Anyone?*, 36 S. Texas L. Rev. 1055 (1995).

Babb, Diane Leigh, *Take Caution When Representing Clients Across State Lines: The Services Provided May Constitute the Unauthorized Practice of Law*, 50 Alabama L. Rev. 535 (Winter 1999).

Barker, William T., *Extrajurisdictional Practice By Lawyers* (Symposium on the Multijurisdictional Practice of Law, March, 2000)(www.abanet.org/cpr/mjp-home.html).

Brakel & Loh, *Regulating the Multistate Practice of Law*, 50 Wash. L. Rev. 699 (1975).

Carr, Edward A. and Van Fleet, Allan, *Professional Responsibility Law in Multijurisdictional Litigation: Across the Country and Across the Street*, 36 S. Texas L. Rev. 859 (1995).

Clark, Kathleen, *Is Discipline Different? An Essay on Choice of Law and Lawyer Conduct*, 36 S. Texas L. Rev. 1069 (1995).

Collett, Teresa Stanton, *Ethics and the Multijurisdictional Practice of Law*, 36 S. Texas L. Rev. 657 (1995).

Creamer, Robert A., *Registration Revisited: A Practical Proposal for the Multijurisdictional Morass*, *The Professional Lawyer* (2000 Symposium Issue).

Daly, Mary C., *Resolving Ethical Conflicts In Multijurisdictional Practice -- Is Model Rule 8.5 The Answer, An Answer, Or No Answer At All?*, 36 S. Texas L. Rev. 715 (1995).

Davis, Anthony E., *Multijurisdictional Practice by Transactional Lawyers-Why the Sky is Falling*, *The Professional Lawyer*, Vol. 11, No. 2 (Winter 2000).

Dzienkowski, John S., *Legal Malpractice and the Multistate Law Firm: Supervision of the Multistate Offices; Firms as Limited Liability Partnerships; and Predispute Agreements to Arbitrate Client Malpractice Claims*, 36 S. Texas L. Rev. 967 (1995).

Green, Bruce A., *Assisting Clients with Multi-State and Interstate Legal Problems: The Need to Bring the Professional Regulation of Lawyers into the 21st Century* (June, 2000).

Goebel, Roger J., *The Liberalization of Interstate Legal Practice in the European Union: Lessons for the United States?* International Lawyer, Spring 2000.

Hackett, Susan, *Multijurisdictional Practice Issues: An Overview of the Practical Impact as Seen by the American Corporate Counsel Association* (Symposium on the Multijurisdictional Practice of Law, March, 2000)(www.abanet.org/cpr/mjp-home.html).

Hartigan, Emily Fowler, *Multiple Unities in the Law*, 36 S. Texas L. Rev. 999 (1995).

Jarvis, Peter R., *Where You Stand Depends on Where You Sit: One Litigator's View of Multijurisdictional Practice Issues and Related Policy Questions* (Symposium on the Multijurisdictional Practice of Law, March, 2000)(www.abanet.org/cpr/mjp-home.html).

Luban, David, *A Friendly Amendment to Model Rule 8.5*, 36 S. Texas L. Rev. 1015 (1995).

Lundy, Joseph R. and Creamer, Robert A., *Private Practitioner Problems with Multijurisdictional Law Practice in Transactional and Litigation Matters*, The Professional Lawyer, Vol. 11, No. 2 (Winter 2000).

Maloney, Michael J. and Blizzard, Allison Taylor, *Ethical Issues in the Context of International Litigation: "Where Angels Fear To Tread"*, 36 S. Texas L. Rev. 933 (1995).

Moulton, H. Geoffrey Jr., *Federalism and Choice of Law in the Regulation of Legal Ethics*, 82 Minn. L. Rev. 73 (November 1997).

Needham, Carol A., *Negotiating Multistate Transactions: Reflections on Prohibiting the Unauthorized Practice of Law*, 12 St. Louis U. Pub. L. Rev. 113 (1993).

Needham, Carol A., *The Multijurisdictional Practice of Law and the Corporate Lawyer: New Rules for a New Generation of Legal Practice*, 36 S. Texas L. Rev. 1075 (1995).

Needham, Carol A., *Splitting Bar Admission Into Federal and State Components: National Admission for Advice on Federal Law*, 45 U. Kan. L. Rev. 453 (1997).

Needham, Carol A., *The Application of Unauthorized Practice of Law Regulations to Attorneys Working in Corporate Law Departments* (Symposium on the Multijurisdictional Practice of Law, March, 2000, unpublished manuscript)(See, www.abanet.org/cpr/mjp-home.html).

Rensberger, Jeffrey L., *Jurisdiction, Choice of Law, and the Multistate Attorney*, 36 S. Texas L. Rev. 799 (1995).

Restatement of the Law Governing Lawyers, Title B, Authorized and Unauthorized Practice, Section 3, Jurisdictional Scope of the Practice of Law by a Lawyer (American Law Institute, unpublished December 1999 revision).

Reynolds, William L. and Richman, William M., *Multi-Jurisdiction Practice and the Conflict of Laws* (Symposium on the Multijurisdictional Practice of Law, March, 2000, unpublished manuscript)(See, www.abanet.org/cpr/mjp-home.html).

Roach, Arvid E., II, *The Virtues of Clarity: The ABA's New Choice of Law Rule for Legal Ethics*, 36 S. Texas L. Rev. 907 (1995).

Sutton, John F., Jr., *Unauthorized Practice Of Law By Lawyers: A Post-Seminar Reflection on Ethics and the Multijurisdictional Practice Of Law*, 36 S. Texas L. Rev. 1027 (1995).

Vagts, Detlev F., *Professional Responsibility in Transborder Practice: Conflict and Resolution*, 9 Geo. J. L. Ethics 677 (2000).

Wolfram, Charles W., *Sneaking Around in the Legal Profession: Interjurisdictional Unauthorized Practice by Transactional Lawyers*, 36 S. Texas L. Rev. 715 (1995).

Zacharias, Fred C., *A Nouveau Realist's View of Interjurisdictional Practice Rules*, 36 S. Texas L. Rev. 1037 (1995).

Proposed Rule 5.5, *ABA Model Rules of Professional Conduct* (ABA Commission on Evaluation of the Model Rules of Professional Conduct) (See, <http://www.abanet.org/cpr/ethics2k.html>).

Proposed Rule 8.5, *ABA Model Rules of Professional Conduct* (ABA Commission on Evaluation of the Model Rules of Professional Conduct) (See, <http://www.abanet.org/cpr/ethics2k.html>).

APPENDIX F

ABA COMMISSION ON MULTIJURISDICTIONAL PRACTICE ENTITIES/INDIVIDUALS SUBMITTING WRITTEN COMMENTS

Akron Bar Association
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American Corporate Counsel Association (ACCA)
American College of Real Estate Lawyers (ACREL)
Antitrust Law, ABA Section of
Association of Professional Responsibility Lawyers (APRL)
Barker, William T.
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California Supreme Court MJP Task Force
Camden County Bar Association
Client Protection, ABA Standing Committee on
Colorado Bar Association
Connecticut Bar Association
Corbett, Michael L.
Delaware State Bar Association
Federal Communications Bar Association (FCBA)
Fox, Lawrence J.
General Motors
Giannini, Joseph R.
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Intellectual Property Law, ABA Section of
International Association of Defense Counsel (IADC)
International Law and Practice, ABA Section of (SILP)
Law Student Division, ABA
Law Society of England and Wales
Legal Assistance for Military Personnel, ABA Standing Committee on
Legal Education and Admissions to the Bar, ABA Section of
Litigation, ABA Section of
Los Angeles County Bar Association (LACBA)
Louisiana State Bar Association
Maritime Law Association
Minnesota Board of Law Examiners
Missouri Bar, The
Moser, M. Peter
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National Client Protection Organization (NCPO)
National Organization of Bar Counsel (NOBC)
Nebraska State Bar Association
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APPENDIX G

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APPENDIX H

**American Bar Association Section of International Law and Practice,
Report to the House of Delegates,
Model Rule for the Licensing of Legal Consultants,
February 1995**

RECOMMENDATION

BE IT RESOLVED, that the American Bar Association approves the “Model Rule for the Licensing of Legal Consultants” consisting of ten sections as set forth below;

BE IT FURTHER RESOLVED, that the American Bar Association recommends that each State not presently having a rule for the licensing of legal consultants adopt such a rule conforming to the Model Rule and that those States and the District of Columbia having such rules conform them to the Model Rule; and

BE IT FURTHER RESOLVED, that the text of the Model Rule shall read as follows:

MODEL RULE FOR THE LICENSING OF LEGAL CONSULTANTS

§ 1. General Regulation as to Licensing

In its discretion, the [name of court] may license to practice in this State as a legal consultant, without examination, an applicant who:

- (a) is a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as attorneys or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority;
- (b) for at least five of the seven years immediately preceding his or her application has been a member in good standing of such legal profession and has actually been engaged in the practice of law in the said foreign country or elsewhere substantially involving or relating to the rendering of advice or the provision of legal services concerning the law of the said foreign country; (*Section 1(b) is optional; it may be included as written, modified through the substitution of shorter periods than five and seven years, respectively, or omitted entirely.)
- (c) possesses the good moral character and general fitness requisite for a member of the bar of this State;
- (d) is at least twenty-six years of age; and (*Section 1(d) is optional; it may be included as written, modified through the substitution of a lesser age than twenty-six years, or omitted entirely.)

- (e) intends to practice as a legal consultant in this State and to maintain an office in this State for that purpose.

§ 2. Proof Required

An applicant under this Rule shall file with the clerk of the [name of court]:

- (a) a certificate from the professional body or public authority in such foreign country having final jurisdiction over professional discipline, certifying as to the applicant's admission to practice and the date thereof, and as to his or her good standing as such attorney or counselor at law or the equivalent;
- (b) a letter of recommendation from one of the members of the executive body of such professional body or public authority or from one of the judges of the highest law court or court of original jurisdiction of such foreign country;
- (c) a duly authenticated English translation of such certificate and such letter if, in either case, it is not in English; and
- (d) such other evidence as to the applicant's educational and professional qualifications, good moral character and general fitness, and compliance with the requirements of Section 1 of this Rule as the [name of court] may require.

§ 3. Reciprocal Treatment of Members of the Bar of this State

In considering whether to license an applicant to practice as a legal consultant, the [name of court] may in its discretion take into account whether a member of the bar of this State would have a reasonable and practical opportunity to establish an office for the giving of legal advice to clients in the applicant's country of admission. Any member of the bar who is seeking or has sought to establish an office in that country may request the court to consider the matter, or the [name of court] may do so *sua sponte*.

§ 4. Scope of Practice

A person licensed to practice as a legal consultant under this Rule may render legal services in this State subject, however, to the limitations that he or she shall not:

- (a) appear for a person other than himself or herself as attorney in any court, or before any magistrate or other judicial officer, in this State (other than upon admission *pro hac vice* pursuant to [citation of applicable rule]);
- (b) prepare any instrument effecting the transfer or registration of title to real estate located in the United States of America;

- (c) prepare:
 - (i) any will or trust instrument effecting the disposition on death of any property located in the United States of America and owned by a resident thereof, or
 - (ii) any instrument relating to the administration of a decedent's estate in the United States of America;
- (d) prepare any instrument in respect of the marital or parental relations, rights or duties of a resident of the United States of America, or the custody or care of the children of such a resident;
- (e) render professional legal advice on the law of this State or of the United States of America (whether rendered incident to the preparation of legal instruments or otherwise) except on the basis of advice from a person duly qualified and entitled (otherwise than by virtue of having been licensed under this Rule) to render professional legal advice in this State;
- (f) be, or in any way hold himself or herself out as, a member of the bar of this State; or
- (g) carry on his or her practice under, or utilize in connection with such practice, any name, title or designation other than one or more of the following:
 - (i) his or her own name;
 - (ii) the name of the law firm with which he or she is affiliated;
 - (iii) his or her authorized title in the foreign country of his or her admission to practice, which may be used in conjunction with the name of such country; and
 - (iv) the title "legal consultant," which may be used in conjunction with the words "admitted to the practice of law in [name of the foreign country of his or her admission to practice]" .

§ 5. Rights and Obligations

Subject to the limitations set forth in Section 4 of this Rule, a person licensed as a legal consultant under this Rule shall be considered a lawyer affiliated with the bar of this State and shall be entitled and subject to:

- (a) the rights and obligations set forth in the [Rules] [Code] of Professional [Conduct] [Responsibility] of [citation] or arising from the other conditions and requirements that apply to a member of the bar of this State under the [rules of court governing members of the bar]; and

- (b) the rights and obligations of a member of the bar of this State with respect to:
 - (i) affiliation in the same law firm with one or more members of the bar of this State, including by:
 - (A) employing one or more members of the bar of this State;
 - (B) being employed by one or more members of the bar of this State or by any partnership [or professional corporation] which includes members of the bar of this State or which maintains an office in this State; and
 - (C) being a partner in any partnership [or shareholder in any professional corporation] which includes members of the bar of this State or which maintains an office in this State; and
 - (ii) attorney-client privilege, work-product privilege and similar professional privileges.

§ 6. Disciplinary Provisions

A person licensed to practice as a legal consultant under this Rule shall be subject to professional discipline in the same manner and to the same extent as members of the bar of this State and to this end:

- (a) Every person licensed to practice as a legal consultant under these Rules:
 - (i) shall be subject to control by the [name of court] and to censure, suspension, removal or revocation of his or her license to practice by the [name of court] and shall otherwise be governed by [citation of applicable statutory provisions]; and
 - (ii) shall execute and file with the [name of court], in such form and manner as such court may prescribe:
 - (A) his or her commitment to observe the [Rules] [Code] of Professional [Conduct] [Responsibility] of [citation] and the [rules of court governing members of the bar] to the extent applicable to the legal services authorized under Section 4 of this Rule;
 - (B) an undertaking or appropriate evidence of professional liability insurance, in such amount as the court may prescribe, to assure his or her proper professional conduct and responsibility;
 - (C) a written undertaking to notify the court of any change in such person's good standing as a member of the foreign legal profession referred to in Section 1(a) of this Rule and of any final action of

the professional body or public authority referred to in Section 2(a) of this Rule imposing any disciplinary censure, suspension, or other sanction upon such person; and

- (D) a duly acknowledged instrument, in writing, setting forth his or her address in this State and designating the clerk of such court as his or her agent upon whom process may be served, with like effect as if served personally upon him or her, in any action or proceeding thereafter brought against him or her and arising out of or based upon any legal services rendered or offered to be rendered by him or her within or to residents of this State, whenever after due diligence service cannot be made upon him or her at such address or at such new address in this State as he or she shall have filed in the office of such clerk by means of a duly acknowledged supplemental instrument in writing.
- (b) Service of process on such clerk, pursuant to the designation filed as aforesaid, shall be made by personally delivering to and leaving with such clerk, or with a deputy or assistant authorized by him or her to receive such service, at his or her office, duplicate copies of such process together with a fee of \$10. Service of process shall be complete when such clerk has been so served. Such clerk shall promptly send one of such copies to the legal consultant to whom the process is directed, by certified mail, return receipt requested, addressed to such legal consultant at the address specified by him or her as aforesaid.

§ 7. Application and Renewal Fees

An applicant for a license as a legal consultant under this Rule shall pay an application fee which shall be equal to the fee required to be paid by a person applying for admission as a member of the bar of this State under [rules of court governing admission without examination of persons admitted to practice in other States]. A person licensed as a legal consultant shall pay renewal fees which shall be equal to the fees required to be paid by a member of the bar of this State for renewal of his or her license to engage in the practice of law in this State.

§ 8. Revocation of License

In the event that the [name of court] determines that a person licensed as a legal consultant under this Rule no longer meets the requirements for licensure set forth in Section 1(a) or Section 1(c) of this Rule, it shall revoke the license granted to such person hereunder.

§ 9. Admission to Bar

In the event that a person licensed as a legal consultant under this Rule is subsequently admitted as a member of the bar of this State under the provisions of the Rules governing such admission, the license granted to such person hereunder shall be deemed superseded by the license granted to such person to practice law as a member of the bar of this State.

§ 10. Application for Waiver of Provisions

The [name of court], upon application, may in its discretion vary the application or waive any provision of this Rule where strict compliance will cause undue hardship to the applicant. Such application shall be in the form of a verified petition setting forth the applicant's name, age and residence address, the facts relied upon and a prayer for relief.

*(Parenthetical information is in footnote form in the original document.)

APPENDIX I

For the latest version of this proposal, *see*
www.acca.com/advocacy/mjp/commonsenseproposal.html

JOINT PROPOSAL

**Association of Professional Responsibility Lawyers, American Corporate Counsel
Association & National Organization of Bar Counsel**

MULTIJURISDICTIONAL PRACTICE BY LAWYERS MODEL RULES/STATUTE

Rule/Statute _____. Jurisdiction

(A) The [Supreme Court/Legislature] of [State], in the exercise of its [exclusive] jurisdiction to define the practice of law and to prohibit the unauthorized practice of law within this jurisdiction adopts the following rule, which shall govern the practice of law in this jurisdiction by lawyers admitted in other jurisdictions.

(B) Authorized multijurisdictional practice of law in this jurisdiction is defined as set forth in sub-paragraphs (1) and (2) below:

(1) The practice of law by an attorney who:

- (a) is not licensed in this jurisdiction, but who represents a client on a temporary basis in this jurisdiction; and
- (b) is licensed to practice law in any other jurisdiction; and
- (c) is a member of the bar and in good standing in all such courts and jurisdictions where he or she has been admitted; and
- (d) does not establish an office or other systematic and continuous presence in this jurisdiction for the practice of law or hold himself or herself out as authorized to practice law in this jurisdiction; and
- (e) has advised the client of the status of his or her license and has obtained informed consent for such representation, which may be given retroactively.

(2) The practice of law by an attorney who:

- (a) is not licensed in this jurisdiction; and
- (b) is licensed to practice law in any other jurisdiction; and
- (c) is a member of the bar and in good standing in all such courts and jurisdictions where he or she has been admitted; and
- (d) limits his or her practice of law in this jurisdiction to acting as in-house counsel for a single client; and
- (e) advised such client of the status of his or her license, and obtained the informed consent for such representation from such client, which may be given retroactively.

(C) Authorized multijurisdictional practice does not constitute the unauthorized practice of law as otherwise defined in this jurisdiction.

(D) Attorneys or counselors at law not licensed in this jurisdiction, who are licensed to practice law in any other jurisdiction, and who appear in any court of record or before any administrative hearing officer must also comply with Rules [Rules of Court of this jurisdiction] governing *pro hac vice* admission].

(E) Any attorney who engages in the multijurisdictional practice of law, whether authorized in accordance with these Rules/ this Statute or not, shall be subject to the Rules of Professional Conduct and the Rules of Procedure regarding attorney discipline of this jurisdiction.

APPENDIX J

American Bar Association Commission on Multijurisdictional Practice

Proposed Rule 5.5, *ABA Model Rules of Professional Conduct* (November 26, 2001)

RULE 5.5: UNAUTHORIZED PRACTICE OF LAW

(a) A lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

(b) A lawyer admitted in another United States jurisdiction, but not in this jurisdiction, does not engage in the unauthorized practice of law when the lawyer represents a client on a temporary basis in this jurisdiction if the lawyer's services do not create an unreasonable risk to the interests of the lawyer's client, the public, or the courts.

(c) Services for a client that are within paragraph (b), if performed on a temporary basis by a lawyer admitted and in good standing in another United States jurisdiction, include services that:

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

(2) may be performed by a person who is not a lawyer without a law license or other authorization from a state or local governmental body;

(3) are in or reasonably related to a pending or potential proceeding before a tribunal or administrative agency held or to be held in this or another jurisdiction, if the lawyer is authorized by law or court or agency order to appear in such proceeding or reasonably expects to be so authorized;

(4) are in or reasonably related to a pending or potential arbitration, mediation, or other alternate dispute resolution proceeding held or to be held in this or another jurisdiction;

(5) are not within paragraph (c)(3) or (c)(4) and:

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

(6) are governed primarily by federal law, international law, the law of a foreign nation, or the law of a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted to practice in another jurisdiction but not in this jurisdiction does not engage in the unauthorized practice of law in this jurisdiction:

(1) if the lawyer is an employee of a client and acts on behalf of the client or its commonly owned organizational affiliates except for work for which *pro hac vice* admission is required; or

(2) when the lawyer renders services in this jurisdiction pursuant to other authority granted by federal law or the law or a court rule of this jurisdiction.

(e) Except as authorized by these rules or other law, a lawyer who is not admitted to practice in this jurisdiction shall not (i) establish an office or other permanent presence in this jurisdiction for the practice of law; or (ii) represent or hold out to the public that the lawyer is admitted to practice law in this jurisdiction.

Comment

[1] A lawyer may regularly practice law only in a jurisdiction in which the lawyer is admitted to practice. The practice of law in violation of lawyer-licensing standards of another jurisdiction constitutes a violation of these Rules.

[2] There are occasions in which lawyers admitted to practice in another jurisdiction, but not in this jurisdiction, may engage in conduct on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (b) provides that such conduct does not constitute unauthorized practice of law and is permitted under these Rules. There is no formula for determining whether a category of conduct by lawyers not admitted to practice in this jurisdiction gives rise to an unreasonable risk to the interests of their clients, the public or the courts. A relevant consideration in applying paragraph (b) is whether it is in the interest of clients, and the public generally, for lawyers to be able to engage in the particular type of conduct on behalf of clients outside the jurisdictions in which they are admitted to practice.

[3] There is no single test to determine whether a lawyer's services are "performed on a temporary basis" in this jurisdiction, and may therefore be permissible under paragraphs (b), and (c). Services may be "temporary" even though the lawyer is in this jurisdiction for an extended period of time, as when the lawyer is representing a client in a single lengthy litigation in this jurisdiction on a *pro hac vice* basis. On the other hand, services

may not be “temporary” even though the lawyer is present in this jurisdiction only episodically.

[4] Paragraph (c) identifies situations in which a lawyer admitted to practice in another United States jurisdiction may engage in conduct in this jurisdiction on a temporary basis. The list is not exclusive but illustrative. The fact that conduct is not included or described in this Rule is not intended to imply that such conduct is the unauthorized practice of law.

[5] Paragraph (c)(2) applies to services that a person who is not a lawyer may perform without a law license or other authorization from a state or local governmental body. For example, in private alternative dispute resolution contexts, a non-lawyer may serve as a mediator or arbitrator. In some administrative proceedings, a non-lawyer is permitted by law to appear on behalf of a party.

[6] Lawyers not admitted to practice generally in the jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. Such authority may be granted pursuant to formal rules governing admission *pro hac vice* or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(3), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission *pro hac vice* before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain such authority.

[7] Paragraph (c)(3) provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted *pro hac vice*. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct in this jurisdiction in connection with pending litigation in which the lawyer is permitted to appear. Such conduct would include conducting depositions but would not include appearances before a tribunal unless the lawyer is admitted to appear *pro hac vice*.

[8] When a lawyer has been admitted *pro hac vice* or reasonably expects to be admitted *pro hac vice* to appear before a court or administrative agency, paragraph (b) would generally permit conduct by lawyers associated with that lawyer but who do not expect to appear before the court or administrative agency and who therefore have not themselves sought and will not seek admission *pro hac vice*. For example, subordinate lawyers may conduct research, review documents or attend meetings with witnesses in support of the lawyer responsible for the litigation.

[9] Paragraph (c)(4) generally would permit a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services

are in or reasonably related to a pending or potential arbitration, mediation, or other alternate dispute resolution proceeding held or to be held in this or another jurisdiction. However, the lawyer must obtain admission *pro hac vice* in the case of a court-annexed arbitration or mediation if the court rules or law require the lawyer to do so.

[10] Paragraph (c)(5) applies to conduct that is unrelated to pending or potential appearances before a tribunal or other dispute resolution forum that is performed on a temporary basis in this jurisdiction. It addresses temporary services on behalf of a client who resides in or has an office in the jurisdiction in which the lawyer is authorized to practice. For example, the lawyer may represent a resident of the lawyer's jurisdiction in connection with the sale of goods. Or the lawyer who represents a company with an office in the lawyer's jurisdiction may perform legal services for the company in this jurisdiction. This paragraph also addresses temporary services that 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. For example, a lawyer representing a client in connection with the purchase of property in the lawyer's home-jurisdiction may meet with the client or meet with the seller and its lawyers in this jurisdiction.

[11] Other than authorized by law or this Rule, it is a violation of this Rule for a lawyer who is not admitted to practice in this jurisdiction to establish an office or other systematic and continuous presence in this jurisdiction for the practice of law or hold himself or herself out as authorized to practice law in this jurisdiction.

[12] Paragraphs (b), (c), and (d) do not authorize communications advertising legal services to prospective clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Article VII of these Rules.

APPENDIX K

PROPOSED MODEL MOTION RULE

**BAR ADMISSIONS COMMITTEE
SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR**

**MINNEAPOLIS, MINNESOTA
ADOPTED OCTOBER 28, 2000**

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

The applicant shall:

- (a) Have been admitted by bar examination to practice law in another state, territory, or the District of Columbia;
 - (b) Hold a first professional degree in law (J.D. or LL.B.) from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time the degree was conferred;
 - (c) Have been primarily engaged in the active practice of law in one or more states, territories, or the District of Columbia for five of the seven years immediately preceding the date upon which the application is filed;
 - (d) Submit evidence of a passing score on the Multistate Professional Responsibility Examination as it is established in this jurisdiction;
 - (e) Establish that the applicant is currently a member in good standing in all jurisdictions where admitted;
 - (f) Establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;
 - (g) Establish that the applicant possesses the character and fitness to practice law in this jurisdiction; and
 - (h) Designate the Clerk of the jurisdiction's highest court for service of process.
2. For the purposes of this rule, the "active practice of law" shall include the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that affirmatively permits such activity by a lawyer not admitted to practice; however, in no event shall activities listed under (2)(e) and (f) that were performed in advance of bar admission in the

jurisdiction to which application is being made be accepted toward the durational requirement:

- (a) Representation of one or more clients in the private practice of law;
 - (b) Service as a lawyer with a local, state, or federal agency, including military service;
 - (c) Teaching law at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association;
 - (d) Service as a judge in a federal, state, or local court of record;
 - (e) Service as a judicial law clerk; or
 - (f) Service as corporate counsel.
3. For the purposes of this rule, the active practice of law shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located.
4. An applicant who has failed a bar examination administered in this jurisdiction within five years of the date of filing an application under this rule shall not be eligible for admission on motion.

em
11/14/00

APPENDIX L

FOREIGN LAWYERS PROPOSED MODEL RULE AMENDMENT

A lawyer who is admitted only in a non-United States jurisdiction does not engage in the unauthorized practice of law in this jurisdiction when, on a temporary basis, the lawyer performs services for a client in this jurisdiction that

a. are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the representation;

b. may be performed by a person who is not a lawyer without a law license or other authorization from a state or local governmental body;

c. are in or reasonably related to a pending or potential proceeding before a tribunal or administrative agency held or to be held in a jurisdiction outside the United States if the lawyer is authorized by law or court or agency rule to appear in such proceeding or reasonably expects to be so authorized;

d. are in or reasonably related to a pending or potential arbitration, mediation, or other alternate dispute resolution proceeding held or to be held in this or another jurisdiction;

e. are not within paragraphs (c) or (d) and:

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

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

For purposes of this paragraph 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 attorneys or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority.

APPENDIX M

ABA Section of Litigation

Model Rule on *Pro Hac Vice* Admission

Proposed Revisions 11/05/01

I. Admission in Pending Litigation Before a Court or Agency

A. Definitions

1. An "**out-of-state**" attorney is a person not admitted to the bar of this state but who is a member in good standing of the bar of any United States District Court or of the highest court of any state, territory, or insular possession of the United States or of the District of Columbia.

2. An out-of-state attorney is "**eligible**" for admission *pro hac vice* if that attorney:

- a. lawfully practices solely on behalf of the attorney's employer and its commonly owned organizational affiliates, regardless of where such attorney may reside or work; or
- b. neither resides nor is regularly employed at an office in this state; or
- c. resides in this state but (i) lawfully practices from offices in one or more other states and (ii) practices no more than temporarily in this state, whether pursuant to admission *pro hac vice* or in other lawful ways.

3. A "**client**" is a person or entity for which the out-of-state attorney has rendered services or by whom the attorney has been retained prior to the attorney's performance of services in this state.

4. An "**alternative dispute resolution**" ("ADR") proceeding includes all types of arbitration or mediation, and all other forms of alternative dispute resolution, whether arranged by the parties or otherwise.

5. "**This state**" refers to the [*state or other jurisdiction promulgating this rule*]. This rule does not govern proceedings before a federal court or federal agency located in this state unless that body adopts this rule.

B. Authority of Court or Agency To Permit Appearance By Out-Of-State Attorney and In-State Lawyer's Duties Generally

1. Court Proceeding. A court of this state may, in its discretion, admit an eligible out-of-state attorney retained to appear in a particular proceeding pending before such court to appear *pro hac vice* as counsel in that proceeding.

2. Administrative Agency Proceeding. If practice before an agency of this state is limited to lawyers, the agency may, using the same standards and procedures as a court, admit an eligible out-of-state lawyer who has been retained to appear in a particular agency proceeding to appear as counsel in that proceeding *pro hac vice*.

3. In-State Lawyer's Duties. When an out-of-state attorney appears for a client in a proceeding pending in this state, either in the role as an attorney of record, or in an advisory or consultative role, any in-state lawyer for that client in the proceeding remains responsible to the client and remains responsible for the conduct of the proceeding before the court or agency. It is the duty of the in-state lawyer to advise the client in the suit of the in-state lawyer's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the out-of-state attorney.

C. Application Procedure

1. Verified Application. An eligible out-of-state attorney seeking to appear in a proceeding pending in this state as counsel *pro hac vice* shall file a verified application with the court where the litigation is filed. The application shall be served on all parties who have appeared in the case and the [lawyer regulatory authority]. [The entity that regulates the conduct of attorneys should be mentioned by name in the rule whenever the term "lawyer regulatory authority" is included in this mode rule.]. The application shall include proof of service. The court has the discretion to grant or deny the application summarily if there is no opposition.

2. Objection to Application. The [lawyer regulatory authority] may file an objection to the application or seek the court's imposition of conditions to its being granted. The [lawyer regulatory authority] or objecting party must file with its objection a verified affidavit containing or describing information establishing a factual basis for the objection. The [lawyer regulatory authority] or objecting party may seek denial of the application or modification of it. If the application has already been granted, the [lawyer regulatory authority] may move that the *pro hac vice* admission be withdrawn.

3. Standard for Admission and Revocation of Admission. The courts and agencies of this state have discretion as to whether to grant applications for admission *pro hac vice*. An application ordinarily should be granted unless the court or agency finds reason to believe that such admission:

- a. may be detrimental to the prompt, fair and efficient administration of justice,

- b. may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent,
- c. one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk, or
- d. the applicant has engaged in such frequent appearances as to constitute regular practice in this state.

4. Revocation of Admission. Admission to appear as counsel *pro hac vice* in a suit may be revoked for any of the reasons listed in Section I.C.3 above.

D. Application

1. Required Information. An application shall state the information listed on Appendix A to this rule. The applicant may also include any other matters supporting admission *pro hac vice*.

2. Application Fee. An applicant for permission to appear as counsel *pro hac vice* under this rule shall pay a non-refundable fee as set by the [lawyer regulatory authority] at the time of filing the application.

E. Authority of the [Lawyer Regulatory Authority] and Court: Application of Ethical Rules, Discipline, Contempt and Sanctions

1. Authority Over Out-of-State Attorney and Applicant.

- a. During pendency of an application for admission *pro hac vice* and upon the granting of such application, an out-of-state attorney submits to the authority of the courts and the [lawyer regulatory authority] of this state for all conduct relating in any way to the proceeding in which out-of-state attorney seeks to appear. The applicant or out-of-state attorney who has obtained *pro hac vice* admission in a proceeding submits to this authority for all that attorney's conduct (i) within the state while the proceeding is pending or (ii) arising out of or relating to the application or the proceeding. An applicant or out-of state attorney who has *pro hac vice* authority for a proceeding may be disciplined in the same manner as an in-state lawyer.
- b. The courts' and [lawyer regulatory authority's] authority includes, without limitation, the courts' and [lawyer

regulatory authority's] rules of professional conduct, rules of discipline, contempt and sanctions orders, local court rules, and court policies and procedures.

2. Familiarity With Rules. An applicant shall become familiar the rules of professional conduct, rules of discipline of the [*lawyer regulatory authority*], local court rules, and policies and procedures of the court before which the applicant seeks to practice.

II. Out-of-State Proceedings, Potential In-State and Out-of-State Proceedings, and All ADR

A. In-State Ancillary Proceeding Related to Pending Out-of-State Proceeding. In connection with proceedings pending outside this state, an out-of-state attorney admitted to appear in that proceeding may render in this state legal services regarding or in aid of such proceeding.

B. Consultation by Out-of-State Attorney

1. Consultation with In-State Lawyer. An out-of-state attorney may consult in this state with an in-state lawyer concerning the in-state's lawyer's client's pending or potential proceeding in this state.

2. Consultation with Potential Client. At the request of a person in this state contemplating a proceeding or involved in a pending proceeding, irrespective of where the proceeding is located, an out-of-state attorney may consult in this state with that person about that person's possible retention of the out-of-state lawyer in connection with the proceeding.

C. Preparation for In-State Proceeding. On behalf of a client in this state or elsewhere, the out-of-state attorney may render legal services in this state in preparation for a potential proceeding to be filed in this state, provided that the out of state attorney reasonably believes he is eligible for admission *pro hac vice* in this state.

D. Preparation for Out-of-State Proceeding. In connection with a potential proceeding to be filed outside this state, an out-of-state attorney may render legal services in this state for a client or potential client located in this state, provided that the out of state attorney is admitted or reasonably believes he is eligible for admission generally or *pro hac vice* in the jurisdiction where the proceeding is anticipated to be filed.

E. Services Rendered Outside This State for In-State Client. An out-of-state attorney may render legal services while the attorney is physically outside this state when requested by a client located within this state in connection with a potential or pending proceeding filed in or outside this state.

F. Alternative Dispute Resolution ("ADR") Procedures. An out-of-state attorney may render legal services to prepare for and participate in an ADR procedure regardless of where the ADR procedure is expected to take or actually takes place.

G. No Solicitation. An out-of-state attorney rendering services in this state in compliance with this rule or here for other reasons is not authorized by anything in this rule to hold himself or herself out, to non-lawyers who have not requested the out-of-state lawyer's presence, as available to assist in potential suits. Nothing in this rule authorizes out-of-state attorneys to solicit, advertise, or otherwise hold themselves out in publications directed solely to this state as available to assist in litigation in this state.

H. Temporary Practice. An out-of-state attorney will only be eligible for admission *pro hac vice* or to practice in another lawful way no more than temporarily in this state.

III. NOT THE UNAUTHORIZED PRACTICE OF LAW. The foregoing rendition of legal or other services shall not be deemed the unauthorized practice of law by the out-of-state attorney, even if ultimately no proceeding is filed or if *pro hac vice* admission is ultimately denied. An out-of-state attorney rendering services in this state in compliance with this rule or here for other reasons is not authorized by anything in this rule to hold himself or herself out, to non-lawyers who have not requested the out-of-state lawyer's presence, as available to assist in potential suits.

ATTACHMENT A

The out-of-state attorney application shall include:

1. the applicant's residence and business address;
2. the name, address and phone number of each client sought to be represented;
3. the courts before which applicant has been admitted to practice and the respective period(s) of admission;
4. whether the applicant (a) has been denied admission *pro hac vice* in this state, (b) had admission *pro hac vice* revoked in this state, or (c) has otherwise formally been disciplined or sanctioned by any court in this state. If so, specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings, the date filed, and what findings were made and what action was taken in connection with those proceedings;
5. whether any formal, written disciplinary proceeding has ever been brought against the applicant by a disciplinary committee in any other jurisdiction within the last five (5) years and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;
6. whether the applicant has been held formally in contempt or otherwise sanctioned by any court in a written order in the last five (5) years for disobedience to its rules or orders, and, if so: the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, caption of the proceedings, and the substance of the court's rulings (a copy of the written order or transcript of the oral rulings shall be attached to the application);
7. the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear *pro hac vice* in this state within the preceding two years; the date of each application; and the outcome of the application;
8. an averment as to the applicant's familiarity with the rules of professional conduct, rules of discipline of the [*lawyer regulatory authority*], local rules and court procedures of the court before which the applicant seeks to practice; and
9. the name, address, telephone number and bar number of an active member in good standing of the bar of this state who will sponsor the applicant's *pro hac vice* request. The bar member preferably will be the attorney of record for the client(s) the applicant seeks to represent.
10. **Optional:** the applicant's prior or continuing representation in other matters of one or more of the clients the applicant proposes to represent and any relationship between such other matter(s) and the proceeding for which applicant seeks admission.
11. **Optional:** any special experience, expertise, or other factor deemed to make it particularly desirable that the applicant be permitted to represent the client(s) the applicant proposes to represent in the particular cause.

APPENDIX N

MODEL RULE 8.5 (a) PROPOSED AMENDMENT

MJP PROPOSED MODEL RULE 8.5

(Adds two sentences to end of Comment 1, [bold and italicized])

RULE 8.5: DISCIPLINARY AUTHORITY; CHOICE OF LAW

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer renders or offers to render any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction ~~where the lawyer is admitted~~ for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a ~~proceeding in~~ matter pending before a court ~~before which a lawyer has been admitted to practice (either generally or for purposes of that proceeding)~~ tribunal, the rules to be applied shall be the rules of the jurisdiction in which the ~~court~~ tribunal sits, unless the rules of the ~~court~~ tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer is not subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur

~~(i) if the lawyer is licensed to practice only in this jurisdiction, the rules to be applied shall be the rules of this jurisdiction, and~~

~~(ii) if the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.~~

Comment

Disciplinary Authority

[1] ~~Paragraph (a) restates~~ It is longstanding law that conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to

other lawyers who render or offer to render legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. *Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. See, Rules 6 and 22, Model Rules for Lawyer Disciplinary Enforcement.*

Choice of Law

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. ~~In the past, decisions have not developed clear or consistent guidance as to which rules apply in such circumstances.~~ Additionally, the lawyer's conduct might involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, ~~and~~ (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing a safe harbor for lawyers who act reasonably in the face of uncertainty.

[4] Paragraph (b)(1) provides that as to a lawyer's conduct relating to a proceeding ~~in pending before a court before which the lawyer is admitted to practice (either generally or pro hac vice) tribunal,~~ the lawyer shall be subject only to the rules of professional conduct of that ~~court tribunal~~. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer licensed to practice only in this jurisdiction shall be subject to the rules of professional conduct of this jurisdiction, and that a lawyer licensed in multiple jurisdictions shall be subject only to the rules of the jurisdiction where he or she (as an individual, not his or her firm) principally practices, but with one exception: if particular conduct clearly has its predominant effect in another admitting jurisdiction, then only the rules of that jurisdiction shall apply. The intention is for the latter exception to be a narrow one. It would be appropriately applied, for example, to a situation in which a lawyer admitted in, and principally practicing in, State A, but also admitted in State B, handled an acquisition by a company whose headquarters and operations were in State B of another, similar such company. The exception would not appropriately be applied, on the other hand, if the lawyer handled an acquisition by a company whose headquarters and operations were in State A of a company whose headquarters and main operations were in State A, but which also had some operations in State B shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the

predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

[5] When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer is not subject to discipline under this Rule.

{5} [6] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

{6} [7] ~~The choice of law provision is not intended to apply to~~ applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise. ~~Choice of law in this context should be the subject of agreements between jurisdictions or of appropriate international law.~~

APPENDIX O

MODEL RULES FOR LAWYER DISCIPLINARY ENFORCEMENT PROPOSED AMENDMENTS

ABA Model Rules for Lawyer Disciplinary Enforcement

(amended 10/12/01)

RULE 6. JURISDICTION.

A. Lawyers Admitted to Practice. Any lawyer admitted to practice law in this 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 jurisdiction for a particular proceeding, and any lawyer not admitted in this jurisdiction who practices law or renders or offers to render any legal services in this 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 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 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 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 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) Based on the record created by the jurisdiction which imposed the discipline, 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
- (3) The discipline imposed would result in grave injustice or is offensive to the public policy of the jurisdiction; or
- (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 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 jurisdiction in which the respondent is licensed.

A judicial determination of misconduct or disability by the respondent in another jurisdiction is conclusive, and not subject to relitigation in the forum 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, Commentary [1], Model Rules of Professional Conduct.