Legal Ethics: Multijurisdictional Practice While Avoiding the Unauthorized Practice of Law

September 20, 2024

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By Zachary S. McGee

September 20, 2024

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Welcome to today's program: "Multijurisdictional Practice While Avoiding the Unauthorized Practice of Law." My name is Zach McGee. I'm a Senior Vice President, Business Affairs, for Sony Pictures Entertainment. Prior to joining Sony Pictures, I was an in-house lawyer at NBCUniversal and before that, I was a lawyer at DavisPolk. I've been writing and speaking on legal education topics for the past twenty years, including having taught a course on legal ethics at Pepperdine Law School. As you might expect, I am speaking today solely on behalf of myself and my views don't reflect those of my current or any former employers or institutions with which I've been affiliated.

Several years ago, the National Law Journal published an expose entitled "GC's forget one detail: their license" where they famously outed 8 general counsel of Fortune 500 companies who were not properly licensed to practice law in the states where they worked. If the Journal were to run a similar story today, might your name be on that list? Of course, that would be a reputational disaster and something I am sure each of you very much would like to avoid. I'm here today to talk to you about how lawyers should approach practicing law in states where you are not licensed, and to share four key pieces of advice that should help you to avoid engaging in the unauthorized practice of law.

Throughout my career both as a law firm and in-house lawyer, I frequently been asked to advise clients and work on matters arising throughout the United States – not just in New York and California where I am a member of the bar – but in states like Nevada, Texas, and Virginia, among many others. As a result, the issues raised by multijurisdictional practice are ones I have researched and thought a lot about in my legal practice. Even if most of the legal work you do for your law firm or company is for clients in your home state, in today's world chances are

you're going to be asked to work on transactional or litigation matters arising in other states. For that reason, it's important to know the rules that govern multijurisdictional practice and the unauthorized practice of law to make sure you always stay on the right side – and never the wrong side – of those rules because breaking them can have serious consequences for lawyers. The good news is that the rules that govern multijurisdictional practice are now much clearer and easier for lawyers to navigate than at any time in the past. If you spend an hour with me today to learn the rules and take care to follow them, you should be able to represent your clients in matters arising in any U.S. state, confident that your name will not appear on a future "wall of shame" of lawyers engaged in the unauthorized practice of law.

We're going to do a couple of things today. First, we're going to talk about the legal ethics rules in some detail, which are ABA Model Rules 5.5 and 8.5. In case you are worried that studying ABA Model Rules might be a waste of time, I am pleased to inform you that as of September 2024, ABA Model Rules 5.5 and 8.5 have been adopted in some form or another by 48 of the 50 U.S. States plus the District of Columbia. So, this means that if you live in any state except Hawaii and Texas, and if you learn ABA Model Rules 5.5 and 8.5, you'll be pretty well covered, which is great news for today's lawyers. I would be remiss if I didn't pause briefly to contrast today's regime of nearly uniform rules with twenty-five years ago when we had substantial uncertainty over what, if any, legal practice outside your home state was permissible. While the ABA doesn't always get things right or make the practice of law <u>less</u> complicated, we should credit them in this case for promulgating ABA Model Rules 5.5 and 8.5 and persuading nearly all states to adopt them in some form.

Second, even though both California and New York are among the states that have adopted rules similar to ABA Model Rules 5.5 and 8.5, we are going to spend some time reviewing the rules in those states in detail for two reasons. First, many lawyers – like me – are licensed to practice in one or more of those two states so it will benefit a lot of lawyers to know the specifics of those rules and what they require of lawyers who are governed by them. Second, pursuant to the terms of ABA Model Rule 8.5, a lawyer is not only subject to the legal ethics rules of the state in which he or she is licensed but also in any state where the lawyer "provides or offers to provide legal services." Because law firm and in-house lawyers often work on

transactional or litigation matters arising in California and New York, those lawyers need to know the legal ethics rules that govern the practice of law in California and New York under those states' equivalents of ABA Model Rule 8.5. Third, we are going to cover off the question of remote or hybrid work. Helpfully, in recent years the ABA as well as California, New York and many other states have interpreted ABA Model Rules 5.5 and 8.5 to permit lawyers who have chosen to continue working on a fully remote or hybrid basis following the COVID-19 pandemic to do so without having to worry that they are engaging in the unauthorized practice of law as long as they follow a few simple rules. Along the way, I'm going to share four key pieces of easy to follow advice for lawyers that should help you avoid engaging in the unauthorized practice of law.

Before we get started, why should you care about multijurisdictional practice? After all, what's the worst that could happen to a lawyer who is found to have engaged in the unauthorized practice of law? Well, the parade of horribles is actually quite long and distinguished, and it includes at least three categories of nasty consequences: reputational, legal and ethical. We already talked about reputational consequences – being outed publicly as an unlicensed lawyer – would be a very bad thing for you and your law firm or company. We shouldn't underestimate it, but we don't need to belabor the point either. The legal consequences for the unauthorized practice of law include civil liability for you and your law firm or company for violating unauthorized practice of law statutes. A finding of unauthorized practice of law also means that your law firm or company could lose the protection of the attorney-client privilege with respect to communications between you and your clients, and the protections generally accorded to your litigation work product. In the view of the courts that have considered these cases, the result is binary – either you are a lawyer properly licensed to practice in the state, in which case the attorney-client privilege attaches to your communications with your client and to your litigation work product, or you are not a lawyer properly licensed to practice in the state, in which case, there is no privilege or work product protection. No middle ground exists for cases where the client or the lawyer made a mistake of fact or law about the lawyer's right to practice law in the state – it's all or nothing. I'm sure you can imagine how unhappy your clients would be if you had to disclose internal communications everyone thought were privileged or litigation memoranda everyone believed were protected as work product.

Finally, there are the legal ethics consequences for you as a lawyer for having engaged in the unauthorized practice of law, which include potential state bar sanctions of a fine, suspension and disbarment. As we will see later, in nearly all states, a lawyer now can be subject to discipline in at least two states – the state where he or she is licensed and any of the states where he or she performed legal work – so the potential sanctions are effectively multiplied by the number of states involved. In one unfortunate example, an in-house lawyer working in Florida was sanctioned by the Ohio State Bar, the only state where the lawyer had been licensed to practice law, in part for having engaged in the unauthorized practice of law in Florida. The other part was for having failed to satisfy his CLE requirements for several years, so there is a valuable lesson here in that, too! Under the regime created by the ABA Model Rules, the legal ethics rules in Florida also would allow that state to sanction this same lawyer either based on the lawyer's conduct that occurred in that state, or in an act of reciprocity in response to the Ohio State Bar's order disciplining the lawyer, which is not uncommon. In case you are wondering how both the state bars of Ohio and Florida found out that this in-house lawyer was practicing law in Florida without a license, a former employee of the company had reported him to bar officials in both states. Clearly, this in-house lawyer had made at least one enemy at the company who decided to take his revenge on his way out the door. Other sources of potential whistleblowers are opposing parties and their counsel, so it make sense to have your ducks in a row when it comes to practicing law in states where you are not a member of the bar. Whichever of these awful consequences you most want to avoid – reputational, legal or ethical – you simply do not want to be on the wrong side of an unauthorized practice of law finding. Over the next hour, I'll give you the information and guidance you need to avoid that unhappy result, starting with a little background.

In 2000, the ABA formed a multijurisdictional practice commission to study the issues raised by lawyers practicing law in states where they are not admitted, and just two years later, in 2002, the commission's report and recommendations, which included amendments to ABA Model Rules 5.5 and 8.5, were adopted by the ABA. As I mentioned, as of today, every states except Hawaii and Texas, as well as the District of Columbia, have adopted ABA Model Rules 5.5 and 8.5, or similar rules. Let's take a look at what these rules provide starting with ABA Model Rule 5.5. This is a long

rule but it’s critically important for our topic today so we need to review it in its entirety. We’ll break it down into sections a bit later so don’t worry if you find the full text of rule hard to follow.

ABA Model Rule 5.5, which is entitled “Unauthorized Practice of Law; Multijurisdictional Practice of Law,” provides as follows: (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so. (b) A lawyer who is not admitted to practice in this jurisdiction shall not: (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. (c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that: (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter; (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized; (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or (4) are not within paragraphs (c) (2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. (d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that: (1) are provided to the lawyer's employer or its organizational affiliates, are not services for which the forum requires pro hac vice admission; and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed

and authorized by the jurisdiction to provide such advice; or (2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction. (e) For purposes of paragraph (d): (1) the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and subject to effective regulation and discipline by a duly constituted professional body or a public authority; or, (2) the person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction must be authorized to practice under this Rule by, in the exercise of its discretion, [the highest court of this jurisdiction]."

Before we get into the specifics, it's important to recognize what a step forward ABA Model Rule 5.5 was when it was first adopted by the ABA and later by the individual states. For the first time in American legal practice, you have a rule that affirmatively allowed a lawyer to practice law on a temporary basis in a state where he or she is not admitted. Prior to ABA Model Rule 5.5(c), there was no such authority and all such law practice was undertaken at the lawyer's risk. This was a huge step forward for lawyers and our clients and we should thank the ABA for driving this change. Now, ABA Model Rule 5.5 does not give lawyers carte blanche to practice law outside their home states even on a temporary basis, and you should think about the public policies behind the unauthorized practice of law statutes as the main reasons why. These policies were in part a desire to ensure that clients in a state received competent representation, and in part a desire to protect lawyers in that state from competition from lawyers in other states. You can have a healthy debate about whether the desire to protect in-state clients and/or in-state lawyers remain valid objectives in today's world but the fact that those concerns still exist explains why neither the ABA nor the individual states who have adopted ABA Model Rule 5.5 were willing to go further than they did in authorizing lawyers to practice across state lines. So, the result is that a lawyer's ability to practice outside his or her home state on a temporary basis is limited to four specific categories that are set out in ABA Rule 5.5(c)(1)-(4). Importantly, this is not true of remote or hybrid work – which is not considered "temporary" because lawyers generally are engaging in remote or hybrid work on a permanent basis – and we will talk about remote or hybrid work as a separate topic later in today's program.

The first category in Rule 5.5(c)(1) is when the out-of-state lawyer associates with a lawyer in the state who actively participates in the matter. This category is available to both transactional lawyers and litigators and it gives out-of-state lawyers the ability to perform legal services for in-state clients as long as an in-state lawyer is representing the client as well and is playing an active role in the transaction or litigation matter. For in-house lawyers, Rule 5.5(c)(1) would require you to have another in-house lawyer at your company who is a member of the bar of that state associate with you — which often is not possible — or to hire outside counsel in that state to represent your company in the matter so you can associate with those lawyers, which is costly and can be inefficient, particularly if you are already represented by outside counsel in the same matter in another state. If you are cynical, the option for out-of-state lawyers to associate with in-state lawyers sounds like a better deal for both sets of lawyers than the client.

The second category in Rule 5.5(c)(2) is limited to litigators and it allows representation of a client in this state if the representation relates to matter in this state in which the lawyer is authorized to appear, i.e., admitted to that court's bar or admitted for that matter pro hac vice, or to a matter in another state in which the lawyer is authorized to appear, i.e., admitted to that court's bar or admitted for that matter pro hac vice. By way of example, if you are a California lawyer and you want to represent a Nevada client who has been sued in state court in California, you can do that under this category as long as you are admitted to practice in the California state court. Similarly, if you are a California lawyer and you want to represent a Nevada client who has been sued in state court in Nevada, you can do that under this category as long as you are admitted to practice in the Nevada state court, which admission would be pro hac vice because you are not a member of the Nevada bar. While it's nice to have this rule, it really only serves to confirm that litigators who are admitted to practice in the court of their state can represent out-of-state clients in those matters and conversely, that litigators who are admitted pro hac vice in the courts of other states can represent out-of-state clients in those matters. It doesn't give litigators the right to practice law outside their home state except when it is related to a specific litigation matter pending before a court in which they are admitted to practice.

The third category in Rule 5.5(c)(3) is also limited for the most part to litigators because it allows representation of a client in this state if the

representation relates to a pending or potential mediation, arbitration or other form of alternative dispute resolution located in this state or in your state. In order to take advantage of this provision, the mediation, arbitration or other ADR process must relate to the services the lawyer is already doing in his or her state. So, if you are a New York lawyer representing a California client, performing legal work for the client in connection with a dispute arising in New York, you can appear and participate in a AAA arbitration to be held in California without committing the unauthorized practice of law in California under the authority of California's version of ABA Model Rule 5.5, which is California Rule of Court 9.43 and is similar to ABA Model Rule 5.5. ABA Model Rule 5.5(c)(3) thus specifically authorizes out-of-state lawyers to participate in mediations and arbitrations held in a state where they are not admitted on behalf of clients in that state.

Of course, this leave to participate in a mediation or arbitration is not unlimited either under ABA Model Rule 5.5 (c)(3) itself, which places two very important limits on it, or under the similar rules adopted by states like California that may contain other limits or requirements. The first limit set out in ABA Model Rule 5.5(c)(3) is that the mediation or arbitration must be related to services you are performing for the client in your state. If you are not performing any services for the client in your state, then you are not allowed to take advantage of this provision. The intent here is to prevent litigators from being brought in solely to participate in a mediation or arbitration where they have had no prior involvement with the client or dispute, i.e., a "hired gun" solely to handle the mediation or arbitration. By contrast, the intent is to allow out-of-state lawyers who have been involved in the dispute from the get-go to continue to be involved as that dispute gets resolved through mediation and/or arbitration. For in-house lawyers, of course you are already providing services to your company in connection with the matter in your home state, so this requirement always would be satisfied.

The second limitation in ABA Model Rule 5.5(c)(3) is that the out-of-state lawyer can participate in a mediation or arbitration unless pro hac vice admission is required to appear in the mediation or arbitration. There are a few possibilities here. If the mediation or arbitration is being conducted by order of a court or pursuant to a judicial referral, it's likely that the rules of that court will require lawyers to be admitted to practice in that court before they can participate in the court-ordered mediation or arbitration. Pursuant

to ABA Model Rule 5.5(c)(3), you'll need to determine if your court requires pro hac vice admission in such circumstances, and if it does, secure that admission before participating in the mediation or arbitration.

If the mediation or arbitration is being conducted pursuant to the agreement of the parties – either in a pre-existing contract or an agreement made after a dispute arose – and not by order of a court, then it's possible nothing more is required of a lawyer in order to participate. That is the case in New York, where a lawyer can participate in a mediation or arbitration held in New York without any further limitations or requirements pursuant to New York's version of ABA Model Rule 5.5, which is New York Rule of Court 22 NYCRR §523, and is similar to ABA Model Rule 5.5. That is not the case in California which imposes some additional limitations and requirements on lawyers participating in mediations or arbitrations beyond what is set forth in ABA Model Rule 5.5. First, under California Rule of Court 9.43, the out-of-state attorney must apply to the arbitrator or arbitral forum for permission to appear and serve a copy of the application on all parties and the State Bar. This notice requirement is similar to the notice requirement for seeking pro hac vice admission in California state courts. Helpfully, there is no express requirement that the lawyer associate with a member of the California bar or that the out-of-state lawyer not be a resident or regularly practice in California to be allowed to appear before an arbitrator, which is different from the requirements for pro hac vice admission. Second, California Rule of Court 9.43 requires that the application to appear in the arbitration meet the standards of California Code of Civil Procedure §1282.4, which in turn, requires an application include the name and address of local, California-admitted counsel who will be the attorney of record in the arbitration, and that the out-of-state lawyer's practice within California be only occasional. While these two additional requirements imposed by California on lawyers seeking to appear in mediations and arbitrations in California are pretty manageable, the fact that New York – which has no additional requirements beyond what is set out in ABA Model Rule 5.5(c)(3) – and California – which requires lawyers to jump through a few additional hoops – have differences illustrates why it is important to check the specific rules of the states where you are not admitted and in which you plan to render legal services even if those states are listed as having adopted rules similar to ABA Model Rule 5.5.

The fourth category in ABA Model Rule 5.5(c)(4) is for matters relating to or arising out of your practice in your state and not otherwise covered by the other categories. This category is intended to function as a "catch-all" of sorts to cover situations where you are working on a matter that's primarily related to your state but it has effects in another state and the matter doesn't fall squarely into one of the other categories we just mentioned because you're not associating with an in-state lawyer, it isn't a litigation matter or connected to a mediation or arbitration. This provision provides a "safe harbor" for lawyers who perform legal work for clients in states where they are not licensed if primary purpose of your representation of the client is related to your state and the representation of a client outside of the state where you are not licensed.

So, that's ABA Model Rule 5.5. While the rule is pretty clear – at least as far as ethics rules go – it did raise some questions that the ABA felt obliged to clarify in the commentary to the rule. The first question is whether prior representation of a client is necessary before a lawyer is allowed to practice law outside his or her home state on a temporary basis for that client? The answer to this question is "no." The Commentary to ABA Model Rule 5.5 makes it clear that prior representation of the client is not required but it is one of the factors that is relevant to the requirement in sections (c)(3) – the arbitration rule – and (c)(4) – the catch-all rule – that the lawyer's services "arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted." So, if you have represented the client before in connection with matters in your state, that might serve to establish that your services are reasonably related to your practice in your state. Another factor is if the client has previous contacts with your state or if the matter has a previous connection with your state and how many states are involved, i.e., is it just your state and the new state or are there multiple states involved that might weaken the connection to your state? In any case, the Commentary makes it clear that while you can represent a new client for the first time in a state where you are not admitted if you are doing work for that client on temporary basis, you are on safer ground if the client and/or the matter has some connection to your state in cases where you are relying on ABA Model Rule 5.5's arbitration or "catch-all" provisions to authorize your representation of that client. For in-house lawyers, you will have represented your company prior to the matter arising in the other state and that matter will be reasonably related to your practice

representing your company in your home state, so you should not have to worry about satisfying these requirements when taking advantage of the ABA Rule 5.5 (c)(1)-(4).

Let's walk through an example to illustrate how ABA Model Rule 5.5 works in practice. Let's say you are a California lawyer who is employed as has an in-house lawyer for company based in California that has a factories located in Nevada and Arizona. Now a dispute has arisen with a Nevada vendor. Under ABA Model Rule 5.5 (c)(4), it generally would be OK for you to advise your company on Nevada law and Nevada dispute resolution in connection with trying to resolve the dispute with the vendor. Here, you have a California client, you have a history of prior representation of that client, and you have a lot of connection to California and not as much connection to Nevada. Before you actually participate in a mediation or arbitration in Nevada, you'd need to check to see whether Nevada requires pro hac vice admission or has other requirements for lawyers appearing in mediations or arbitrations in Nevada – recall that California imposes some requirements while New York imposes none – to make sure you comply with Nevada's version of ABA Model Rule 5.5(c)(3) if you are seeking to rely on the arbitration rule.

Stepping back from the particulars of ABA Model Rule 5.5, it's easy to remember that except in cases where you are associating with an in-state lawyer – ABA Model Rule 5.5(c)(1) – and where you are applying for admission pro hac vice in a litigation matter – that's ABA Model Rule 5.5(c)(2) – the other categories of acceptable temporary legal practice in another state require some degree of connection between your client and/or the matter and your home state. The more connections you have, the fewer concerns you should have about performing legal work and providing legal advice, and vice versa. More connections mean fewer concerns. If you think about it, all of this is pretty sensible and should help guide you when you are analyzing these issues. The primary danger area here is that the Commentary to ABA Model Rule 5.5 makes it clear that your practice of law is not "temporary" if you have systematic and continuous contacts with that other state, even if you are not physically present in that state, or if you hold yourself out as being admitted in that state. Let's say you are a New York lawyer working as an in-house lawyer for a company based in New York. You do most of your legal work on matters that arise in New York, and you provide legal advice to company officers, directors and employees

based in the company's New York headquarters. However, your company has a subsidiary based in California. From time to time but with increasing frequency, you are asked to provide advice with respect to transactional and litigation matters that involve the subsidiary and other companies with which it does business in California. You also have provided legal advice to officers and employees of the subsidiary located in California in connection with their work for the subsidiary. You don't have a physical office in California, and we assume you never hold yourself out to anyone — whether to officers or employees of the subsidiary or to any representatives of any of the companies with which it does business — as a California lawyer, which of course would be huge "no-no," and most of your clients — your company and its officers, directors and employees, are New York residents, all of which are helpful facts. But you still may have trouble claiming that you are only temporarily practicing law in California because you have systematic and continuous contacts with California, and you are routinely representing a California client, i.e., the subsidiary. Nor does the mere fact that you are not physically located in California mean you can't have a systematic and continuous "virtual" presence in California – the Commentary to ABA Model Rule 5.5 contemplates that a lawyer's presence can be virtual if he or she directs substantial communications to a state for the purpose of representing clients there, which, taken together, amount to a systematic and continuous presence in that state. What this very sensible part of ABA Model Rule 5.5 is saying is that if you are representing a state's clients on a systematic and continuous basis, you need to become a member of that state's bar or need to register as an in-house counsel in that state, and can't rely on ABA Model Rule 5.5 to justify a law practice in that state that isn't in fact temporary.

On the flip side, ABA Model Rule 5.5 recognizes that "temporary" law practice doesn't have a fixed time limit. We all know that litigations tend to last for many months, and in many cases, many years. The Commentary to Rule 5.5 confirms that that you don't violate the requirement that your law practice in the other state be "temporary" simply because you continue to represent a client for a long period of time, for example, in a protracted litigation or in connection with a transaction that lasts for a year or longer. Now, if you repeatedly represent the same out-of-state client on one matter after another over a period of a dozen years, like the subsidiary company based in California we just discussed in our hypothetical, and

neither the client nor any of the matters has any connection to your home state, that might be too much law practice in the other state to be "temporary" and your representation may lack the required connection to your home state if you are relying on the arbitration or catch-all rules. In all cases, you need to be sensible about your representation of clients in states where you are not admitted and think in each case whether your legal work is fairly considered "temporary" and sufficiently connected to your home state.

This brings us to the first of our four key pieces of advice for lawyers to help you avoid the unauthorized practice of law: When In Doubt, Register. While ABA Model Rule 5.5 probably covers you in most cases where you are performing legal work or providing legal advice on a temporary basis in matters arising in states where you are not licensed, you shouldn't rely on ABA Model Rule 5.5 to authorize your legal practice in states where you are physically located or are directing a substantial portion of your legal work on a regular basis. Thankfully, most states now allow in-house counsel to practice law in that state without sitting for the bar exam, requiring only that they satisfy certain requirements, register and often pay some fees. Let's continue with California as our example since my advice to the New York lawyer in our hypothetical who is regularly representing a California subsidiary would be to register as an in-house counsel in California. California requires in-house counsel to pay a registration fee of approximately $1,200, and you must register within six months of your commencing legal work in California otherwise your application might be denied. You also must pay approximately $500 per year to renew your registration, and complete 25 hours of CLE in the first year and 25 hours every 3 years thereafter. While no one likes to pay fees, many companies will reimburse in-house lawyers for those fees, and while almost no one likes to fulfill CLE requirements, these days most CLE programs are available on-line and approved for credit in multiple jurisdictions so the same CLE programs you watch to satisfy CLE requirements in your home state also satisfy the CLE requirement in California and other states.

Is that really all I need to do in order to register as in-house counsel in California and other states? As we lawyers also like to say, "yes, but check the footnotes." California Rule of Court 9.46, which governs the registration of in-house counsel, imposes a few additional requirements, none of which is particularly onerous. For an out-of-state lawyer to practice in California

as a registered in-house counsel, you have to be a member in good standing of your state's bar. This is all about allowing attorneys who are bar members in good standing in one state, to practice law in another state, but you can't get anywhere if you're not already admitted and in good standing in your home state. You also must pass a character examination by the California State Bar, and as I mentioned before, fulfill CLE requirements and pay some fees to the California State Bar.

Some of you might be thinking to yourself, “Self, he says when in doubt register, and that registration is easy, but if I add up all these requirements, wouldn’t I have to do everything a California lawyer has to do except pass the bar exam?” As we lawyers never like to say, “yes [period].” But not having to take the bar exam in California is a huge dispensation. California has a notoriously difficult bar exam – the list of famous lawyers who failed it include Vice President Kamala Harris, California Governor Jerry Brown and former Dean of Stanford Law School Kathleen Sullivan – so the only thing worse than taking it is taking it and failing it, particularly for an experienced in-house lawyer who doesn’t have the excuse of just having graduated from law school. As someone who took both the New York and California bars, I can tell you from personal experience that taking the California bar was much worse, not because it is a harder test — New York’s was harder by far — but because the pass rate in California is so low. You don’t want the stress of having to take that exam and wait four months to see if you are among the lucky 40% who passed it. Register as an in-house counsel, pay your fees, pass the character examination, do your CLE and count yourself lucky that you can practice law in California legally and without having to sit for the California bar.

Once you are registered as an in-house lawyer in California, does that mean you can do everything a California lawyer can do? As we lawyers love to say, “no.” But you can do pretty much everything you need to do as an in-house lawyer, which is the whole point. California Rule of Court 9.46 imposes two limitations on registered in-house counsel, but it also bestows one very important benefit. The first limitation is that you may only represent your employer, including its subsidiaries and affiliates under the company’s control, and you may not represent any individuals. Generally, this should not present a problem for in-house lawyers because in nearly all cases, your client is the company and not any individual employee, officer or director of the company. In rare cases where an in-house lawyer might

represent an individual, that is not permitted if you are an out-of-state lawyer working as an in-house lawyer in California under the authority of Rule 9.46. The second limitation is that in-house lawyers can't make any court appearances, so if you are a litigator or a general counsel who would like to appear in court, you would have to go through the formal pro hac vice process, which may or may not be available to you or may not be a practical solution for in-house counsel due to the separate requirements that practice imposes. For example, in California you may not apply for admission pro hac vice if you are a resident of California, are regularly employed in California or engaged in substantial business, professional or other activities in California. Bottom line, if you are an in-house litigator who seeks to take an active role in litigation, Rule 9.46 may not provide enough flexibility for you and you may need to become a member of the California Bar in order to practice effectively. These two limitations, however, are generally outweighed by one huge benefit: registered in-house counsel can practice indefinitely in California under Rule 9.46. While you must renew your registration annually, fulfill your CLE requirements and pay your fees, you can spend your entire career practicing as an in-house lawyer in California without ever having to sit for its truly awful bar exam.

What if you're looking to go the other way, you're admitted in California but want to register as an in-house lawyer in New York, what are your requirements in that case? New York's Rule of Court 522.1, which governs the registration of in-house lawyers in New York, generally requires the same things and provides the same benefits to in-house lawyers as California's rules do with just a few differences. New York allows foreign lawyers, i.e., lawyers who are admitted in another country such as Canada or the United Kingdom, to register as in-house counsel whereas California permits such lawyers only to register as foreign legal consultants. Foreign legal consultants are limited to giving advice relating only to the laws of their home jurisdiction – and not to the law of the U.S. or any U.S. state – versus registered in-house counsel in New York or California who can give advice on the law of any U.S. state or federal law. New York also allows in-house counsel to represent individuals as long as they are employees, officers or directors of the lawyer's employer, and as long as the representation is in connection with matters relating to the lawyer's work for the employer. In other words, the in-house lawyer can advise an employee on matters relating to his or her work at the company, but not any personal

matters. So, in general, while New York requires registration, passing a character examination, CLE, and payment of some fees, it likewise allows in-house counsel to avoid taking the bar exam, and to practice indefinitely, plus a few additional things that registered in-house lawyers cannot do, such as represent company officers, directors or employees as individuals.

"But wait, you say, doesn't ABA Model Rule 5.5 have a part (d) that specifically talks about in-house counsel. When are you going to get to that?" The answer to that is right now. To remind you, ABA Model Rule 5.5(d) state that: "(d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that: (1) are provided to the lawyer's employer or its organizational affiliates, are not services for which the forum requires pro hac vice admission; and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or (2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction." What this says is that a lawyer admitted in another state, including in a foreign jurisdiction like Canada or the United Kingdom, and not disbarred in any jurisdiction, may provide legal services in this state that are provided to the lawyer's employer or its affiliates as long as they are not services for which the forum requires pro hac vice admission.

The reason I didn't start with Model Rule 5.5(d) is that, as we saw with California and New York, while both states have enacted rules "similar" to ABA Model Rule 5.5(d), the differences are significant enough that you need to learn those rules instead of relying on ABA Model Rule 5.5(d). ABA Model Rule 5.5(d) doesn't require registration but California and New York both do, and in the case of California, registration within the first 6 months or else your application could be denied on that basis alone. For an example that goes the other way, Texas is one of the handful of states that has <u>not</u> adopted a rule similar to ABA Model Rule 5.5(d). But Texas actually gets to the same result as under ABA Model Rule 5.5(d) by different means. The Texas Board of Law Examiners has issued a policy

statement that in-house counsel are not required to be licensed in Texas as long as they are licensed and in good standing in another state and are in-house counsel. So, while Texas does not have a Rule 5.5(d), in-house lawyers can practice in Texas as long as they meet the same requirements as ABA Model Rule 5.5(d). The takeaway here is that if you are an in-house lawyer seeking to take advantage of ABA Model Rule 5.5(d), you need to look at your state's version of ABA Model Rule 5.5(d) to see what it requires, even if you live in a state that has enacted a rule similar to ABA Model Rule 5.5(d). As we saw earlier, both California and New York allow in-house counsel to practice but each piles on a few more requirements and imposes a few more restrictions that are not present in ABA Model Rule 5.5(d) if you want to practice in the Golden or Empire States, respectively.

The second key piece of advice for lawyers to help you avoid the unauthorized practice of law is that There is No Such Thing as a Free Lunch. Being able to practice as a lawyer outside your home state does not come without a price, and I'm not talking about the state bar fees you have to pay or the CLE requirements you have to satisfy. I'm talking about the fact that practicing law outside your home state makes you subject to the ethics rules and the disciplinary authority of the state where you are practicing, in addition to the ethics rules and disciplinary authority of your home state. This is covered by ABA Model Rule 8.5 and it is almost universally followed without modification or exception by all 48 states and the District of Columbia that have adopted ABA Model Rule 8.5 or similar rules. Recall that the first part of ABA Model Rule 8.5 provides that: "(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 provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct." Let's unpack this section of the rule in some detail.

First, ABA Model Rule 8.5 provides that 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. So, if you are a California lawyer, you are always subject to the disciplinary authority of California even when you are performing temporary legal services in another state pursuant to the authority granted by ABA Model Rule 5.5, or if you are an

in-house counsel registered to practice in New York under New York Rule of Court 522.1. Put another way, you can never escape the disciplinary authority of the state or state in which you are a member of the bar. Second, ABA Model Rule 8.5 provides that a lawyer is now also subject to the authority and jurisdiction of the state bar in the state or states where your practice of law occurs. For example, a California lawyer performing temporary legal services in New York for a New York client under ABA Model Rule 5.5(c)(1) is now expressly subject to the jurisdiction and disciplinary authority of the New York State Bar – in addition to the disciplinary authority of California. ABA Model Rule 8.5 now grants each state the authority to discipline a lawyer who is not admitted in that state and you are bound by that Rule in nearly all of the states and the District of Columbia that have adopted ABA Model Rule 8.5 verbatim or a rule similar to ABA Model Rule 8.5.

As a bright lawyer, I'm sure you already have anticipated my next point which is, if I can be subject to two or more state's ethical rules, and because the ethics rules can vary in material respects state to state, doesn't this raise the possibility of conflicts? The answer to that is a resounding "yes," and ABA Model Rule 8.5 itself attempts to resolve certain of those potential conflicts with section (b) entitled "Choice of Law." Here is what the rule says: "(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 matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the 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 shall not be 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." Let's break this part down.

First, if a lawyer's conduct is in connection with a matter pending before a tribunal, it is the rules of the jurisdiction in which the tribunal sits that will govern. So, if you are an in-house litigator representing a client in connection with a lawsuit pending in the U.S. District Court for the Southern District of New York, it is the rules of that court and the legal ethics rules of the state of New York that will govern your conduct. Second, for all other

conduct, it is 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, that will govern. So, the standard here is where the lawyer's conduct occurred or where it had its predominant effect, which is similar to the test for exercising personal jurisdiction over a defendant in a tort action that is familiar to many lawyers. That said, parties litigate all the time over where tortious conduct occurred versus where it has its predominant effect, so this test, while familiar, may not yield a clear result in all cases. The good news is that ABA Model Rule 8.5(b)(2) also includes a safe harbor which is: "A lawyer shall not be 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." So, if you make a reasonable mistake of fact about which jurisdiction's law should apply to your conduct, but you conformed your conduct to the ethics rules of that state, you cannot be disciplined for having picked the wrong state.

My third key piece of advice for in-house lawyers to help you avoid the unauthorized practice of law is: Litigators Beware. As a former law firm and in-house litigator, I can tell you that litigators aren't afraid of much, but we should be afraid — very afraid — when it comes to multijurisdictional practice because this area is full of traps waiting to ensnare in-house litigators. Let me start with a simple case that has a clear — albeit not easy — fix: if you are a litigator and you are not admitted to practice in the state where you work, you need to become a member of that state's bar. There is very little that a litigator can do in his or her home state that doesn't require membership in that state's bar. For example, in California, you can't appear in court or attend a deposition if you are not admitted in California. While you could do both things if you were admitted pro hac vice in the matter, California prohibits lawyers who live or work in California from seeking pro hac vice admission in California state courts. You can't appear or attend a deposition in a case that is pending in California federal court either, as you cannot become a member of those courts unless you are a member of the California bar. If you are a litigator, my strong advice to you is to become a member of the bar in the state where you live and practice because whatever you are probably doing right now involves the unauthorized practice of law in that state. This may sound like tough love, but if you remember the various consequences that can flow

from an unauthorized practice of law finding — reputational, legal and ethical — you will end up thanking me.

For most litigators, they are admitted in their home states, but often are called upon to perform legal work and give advice in connection with litigation matters arising or pending in states where they are not admitted. In typical lawyer fashion, the answer on what to do in these cases is ”it depends,” and we will spend the next few minutes reviewing the ethics rules and walking through a couple of examples. We already reviewed ABA Model Rule 5.5 which affords all lawyers — including litigators — some latitude to practice law temporarily in another state. If you are planning to participate in a litigation matter in a state that has adopted ABA Model Rule 5.5 verbatim, that would be the place to start. But as we saw before, certain states like California and New York have different requirements and impose different restrictions on litigators seeking to practice law in their states so you need to check those states' rules and not simply rely on ABA Model Rule 5.5.

Let's start with California and what it requires of and allows litigators to do in connection with litigation matters arising or pending in California. California Rule of Court 9.47 governs what out-of-state litigators can — and can't — do in California. Rule 9.47 contains two preliminary requirements — one is easy to satisfy and one that could give litigators a problem. The easy requirement for out-of-state litigators is that you must be a member in good standing of your state's bar. You are not going to get very far in multijurisdictional practice if you are disbarred or suspended in your home state. Second, and this is the requirement that could be more problematic, you must have an office outside California and you must not have a California residence or substantial business in California. The idea is that you don't want lawyers who live in California and have their office in California taking advantage of a rule for out-of-state lawyers. As I said before, if you are a litigator living and working in California, you are a California lawyer and you need to be admitted in California. If, on the other hand, you live in New York and your office is in New York, and you don't have any offices in California and you happen, from time to time, to represent your company on litigation matters that arise in California, Rule 9.47 will allow that. Finally, although Rule 9.47 for litigators — unlike Rule 9.46 for in-house counsel — does not require you to register with the State Bar of California, you should recognize that by practicing law in

California pursuant to Rule 9.47,you are subjecting yourself to the disciplinary authority of the California State Bar, in addition to the disciplinary authority of your home state pursuant to ABA Model Rule 8.5.

Apart from these general requirements, Rule 9.47 includes another specific limitation for litigators. Your legal services must be performed in anticipation of filing a lawsuit in California or in a state in which you reasonably expect to be entitled to appear, i.e., a state where you are admitted or a court where you expect to be granted leave to appear pro hac vice, or part of a lawsuit already pending in a state in which you are entitled to appear. In cases where the lawsuit in California is pending, authorization to perform legal services ends when that lawsuit is filed, after which you are required to seek pro hac vice admission in order to continue to participate in that case. The idea here is that if there's pre-litigation going on in California and you expect that a lawsuit will be filed in California, or there's an existing lawsuit in your home state of New York, that you'd be allowed under Rule 9.47 to participate in settlement negotiations or attend a deposition in California. However, once a case is filed in California, Rule 9.47 requires you to seek pro hac vice admission so as not to supplant the existing pro hac vice system and requirements. So, if you're actively going to participate in a lawsuit that's been filed in California, you do have to go through the normal pro hac vice admission process and Rule 9.47 is not a substitute for that.

This is one area of the ethics rules where lawyers doing transactional work have it much better than litigators. In California, as long as you meet the requirements of good standing in another state and no office, residence or substantial business in California, California Rule of Court Rule 9.48 gives lawyers broad latitude to perform legal work and give legal advice in connection with transactional and non-litigation matters as long a material aspect of the transaction or other matter takes place in your state, or the advice relates to an issue of federal law or the law of a state other than California. In other words, Rule 9.48 affords transactional lawyers a broad license to provide legal advice to your company in that it applies to anything non-litigation, and can include advice on California law as long as the material aspect of the matter relates to your own state or relates to other states or federal law, which is a pretty easy standard to meet as long as we are talking about a reasonably complicated transaction or other matter

Let’s turn our attention now to litigators seeking to practice in the Empire State. Unlike California, New York has a Rule of Court that more

closely tracks ABA Model Rule 5.5 (Rule 523), and if you are in compliance with ABA Model Rule 5.5, you will be in compliance with New York's Rule 523. Here are three key points to keep in mind about New York's Rule 523. First, New York does allow out-of-state lawyers to associate with a New York lawyer who actively participates in and assumes joint responsibility for the matter for the purpose of performing temporary legal services in New York. This could be useful for litigators seeking to perform legal work for their client on a matter arising in New York, although it would require them to associate with another lawyer who is admitted in New York. Second, New York allows out-of-state litigators to participate in a mediation, arbitration or other ADR process and unless that process is being conducted in connection with a New York lawsuit, no pro hac vice admission is required. As we know, the vast majority of litigation matters are settled and being able to participate in ADR processes, particularly where ADR is mandatory, can provide litigators with the authorization they need in a large number of cases. Third, like California and ABA Model Rule 5.5, practicing law in New York pursuant to Rule 523 subjects you to the disciplinary authority of the New York State Bar, in addition to the disciplinary authority of your home state pursuant to ABA Model Rule 8.5.

For our final topic, we are going to cover off the question of remote or hybrid work. During the COVID-19 pandemic, when the world was shut down for a matter of many weeks and in some states, for a matter of many months, like everyone else who was able to do so, lawyers were forced to work remotely. Some of those lawyers took the opportunity to relocate to another state and to work remotely from that location. Think of a lawyer who works at a law firm in New York who was licensed in New York and represents clients in New York moving to Florida during the pandemic and working remotely from that location. As the pandemic receded and workplaces began to reopen, like many others, lawyers continued to work remotely or in some cases, to employ a hybrid strategy, spending some number of days physically located in the office and some number of days working remotely from home. This raised the question whether a lawyer as in our hypothetical who moved to Florida but continued to practice law in New York remotely was engaging in the unauthorized practice of law in the remote state, in this case, Florida. To be clear, this is the opposite case from the one we have been considering in today's presentation. Up until now, we have been thinking about a lawyer who lives in New York and is licensed in

New York and is being asked to perform legal work for clients in located in another state such as Florida where the lawyer is not admitted. Remote and hybrid work is where the lawyer is living in Florida but is not performing legal work for clients in Florida but instead, the lawyer is continuing to perform his or her legal work exclusively for clients located in New York where the lawyer is a member of the bar.

Thankfully, in December 2020, the ABA Standing Committee on Ethics and Professional Responsibility stepped in to provide timely guidance on remote or hybrid work by issuing Formal Ethics Opinion No. 495. That Opinion stated that "Lawyers may remotely practice the law of the jurisdictions in which they are licensed while physically present in a jurisdiction in which they are not admitted if the local jurisdiction has not determined that the conduct is the unlicensed or unauthorized practice of law and if they do not hold themselves out as being licensed to practice in the local jurisdiction, do not advertise or otherwise hold out as having an office in the local jurisdiction, and do not provide or offer to provide legal services in the local jurisdiction." Because the ABA does not have the authority to opine on state unauthorized practice of law statutes, it had to defer to the states on that key issue, but at the same time, its opinion that remote work should be allowed stood to carry great weight when the states took up that question. So, as applied to our hypothetical, the ABA had opined that a New York lawyer practicing law remotely from Florida would not be violating ABA Model 5.5(a) as long as Florida doesn't consider remote work to constitute the unauthorized practice of law under Florida law. The lawyer also must not hold himself or herself out as being licensed to practice in Florida, advertise or otherwise hold out as having an office in Florida or provide or offer legal services to clients in Florida. As we saw in our discussion earlier today, these are the same, basic rules that all lawyers must follow with regard to jurisdictions in which they are not licensed so those same requirements would not be a barrier to remote or hybrid work.

In the wake of Formal Opinion No. 495, nearly thirty states and the District of Columbia, including each of the top five states that have the most practicing lawyers which are New York, Maryland, Massachusetts, Connecticut and Illinois, plus other common remote work destinations such as Florida and California, have followed the ABA's lead by confirming that remote work by lawyers in their states does not constitute the unauthorized practice of law as long as the lawyers follow the basic rules outlined above.

In light of the determinations by these key states, you are very likely on safe ground if you are working remotely in a state where you are not admitted as long as you are not holding yourself out as being licensed to practice in the remote state, advertising or otherwise hold out as having an office in the remote state or offering legal services to clients in the remote state.

This brings us very close to the end of today's program and also to my final key piece of advice for lawyers to help you avoid the unauthorized practice of law: Look Before You Leap. While I've given you some guidance today that should help you understand the legal ethics rules that govern multijurisditional practice, and made you aware of several traps for the unwary lurking in these rules, you need to look carefully at the ethics rules that apply in the state or states that are at issue for you before leaping into performing legal work in any of those states.

To prove my point, let's say you are an in-house lawyer in New York who wants to give legal advice to your company in connection with a litigation matter that has been filed against your company in California state court. Having listened to today's presentation, you know that you can only perform temporary legal services in California, and that even those temporary services impose certain limitations on what you can and cannot do, particularly when litigation matters are involved. In light of this, you decide to associate with another in-house lawyer at your company who is admitted in California who will assume primary responsibility for the matter just to be safe. Good idea, bad idea or really bad idea? The answer is (C) — really bad idea. California has no equivalent of ABA Model Rule 5.5(c)(1), which is the provision that gives out-of-state lawyers the option to associate with a local lawyer. The only bases on which an out-of-state lawyer can legally practice law in California in our hypothetical are the ones set out in Rule 9.46 fo registered in-house counsel and Rule 9.47 for litigators. If your representation doesn't fall into one of these categories, or if you don't meet the requirements of that category, you are engaged in the unauthorized practice of law in California. Worse still, your in-house colleague who is associating with you would be violating the ethics rules by aiding and abetting you in the unauthorized practice of law in California. So, by taking what seems like a reasonable and cautious approach to a problem, but without having taken the time to study the California rules carefully, you easily could subject yourself, your colleague and your company, to the reputational, legal and ethical consequences for having engaged in the

unauthorized practice of law. In yet another example, if you are working remotely in Missouri, a state which has adopted a version of ABA Model Rule 5.5 and 8.5, you might be tempted to think you are in the clear but an advisory committee of the Missouri Supreme Court recently issued an informal opinion that performing any legal work in Missouri by a lawyer who is not a member of the Missouri bar would constitute unauthorized practice of law in Missouri. This guidance from Missouri runs contrary to the clear trend among the states but if you are a lawyer in Missouri, it is key guidance that you need to follow so it makes sense to do the research on your particular state and situation before you act when multijurisdictional practice is involved. In closing, always remember: When In Doubt, Register. There is No Such Thing as a Free Lunch. Litigators Beware. And Look Before You Leap. Let's be careful out there.

Multijurisdictional Practice: Avoiding the Unauthorized Practice of Law

PRESENTED BY NEW MEDIA LEGAL PUBLISHING

SEPTEMBER 20, 2024

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Agenda

- The ABA / Majority State Approach: ABA Model Rules 5.5 and 8.5
  - The Outliers: Hawaii and Texas
- California Rules of Court 9.45-9.48; Rule of Prof. Conduct 1-100(D)
- New York Rules of Court 522-523; Rule of Prof. Conduct 8.5
- Remote or Hybrid Work

Why Should I Care about the Unauthorized Practice of Law?

- An unauthorized practice of law finding can have serious consequences for a lawyer:
  - Reputational
  - Financial
  - Legal
  - Ethical
- In this program, you will receive the guidance you need to help you avoid engaging in the unauthorized practice of law

ABA / Majority State Approach

- ABA Multijurisdictional Practice Commission formed June 2000, and the ABA adopted its Report and Recommendations / Amendments to Model Rules 5.5 and 8.5 in August 2002
- As of September 2024, 48 states and District of Columbia have adopted Model Rules 5.5 and 8.5 or similar rules
  - The Outliers: Hawaii and Texas
  - California and New York are both among the states that have adopted rules similar to Model Rules 5.5 and 8.5, but there are some important differences
  - You should review the rules of any state where you intend to practice or have clients to ensure you are aware of any differences from Model Rules 5.5 or 8.5

ABA Model Rule 5.5

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:
(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

ABA Model Rule 5.5

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

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

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

(3) are in or reasonably related to a proceeding or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

ABA Model Rule 5.5

(d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates, are not services for which the forum requires pro hac vice admission; and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or

(2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.

(e) For purposes of paragraph (d): (1) the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and subject to effective regulation and discipline by a duly constituted professional body or a public authority; or,

(2) the person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction must be authorized to practice under this Rule by, in the exercise of its discretion, [the highest court of this jurisdiction]."

ABA Model Rule 5.5 Analysis

- Affirmatively allows "temporary" law practice in states in which you are not licensed
- Four categories of permitted practice:
  - Associating with a lawyer admitted in the state who actively participates in the matter
  - Matters relating to a pending or potential litigation in the state or your state if you are authorized to appear in such litigation
  - Matters relating to a pending or potential mediation, arbitration or other ADR in the state or your state, and relating to services in your state, and *pro hac vice* admission is not required (the "arbitration" rule)
  - Matters relating to our arising out of your practice in your state and not otherwise covered by the above (the "catch all" rule)

ABA Model Rule 5.5 Analysis

- Commentary: Prior representation of a client in your state is not required – it can be a client you are advising for the first time
- Factors to consider for the “arbitration” and “catch-all” rules:
  - Prior representation of the client;
  - The client’s contacts with your state; and
  - The matter’s connection to your state and the number of other states involved

ABA Model Rule 5.5 Analysis

- Your law practice is not "temporary" if you have a "systematic and continuous" presence in the state – even if you are not physically present – or hold yourself out as admitted to practice in that state
- Your law practice may still be "temporary" if you provide services on a recurring basis or for an extended period of time, such as when you represent a client in a single, lengthy transaction or litigation

Four Key Pieces of Advice

No. 1

When In Doubt, Register.

California Rules of Court 9.45-9.48

- Rule of Court 9.45 – Legal Services Attorneys
- Rule of Court 9.46 –In-House Counsel
- Rule of Court 9.47 – Litigators
- Rule of Court 9.48 – Transactional Attorneys
- Note: Rule of Prof. Conduct 1-100(D) is the Model Rule 8.5 equivalent

California Rules of Court 9.45 and 9.46

- Requirements (legal services attorneys and in-house counsel):
  - Member in good standing of your state's bar;
  - Register with, pass character examination by and pay fees to the California State Bar (the same as regular bar members except that the bar exam is not required); and
  - Fulfill California CLE requirements (again, the same as regular bar members)
- By registering as legal services attorney or in-house counsel in California, you subject yourself to California's legal ethics rules and the disciplinary authority of the California State Bar
- In addition, you remain subject to the legal ethics rules and disciplinary authority of your home state pursuant to your state's equivalent of Model Rule 8.5

California Rules of Court 9.46

- Limitations for in-house counsel:
  - You may only work for your employer, and you may not represent individuals (company employees or third parties);
  - You may not make any court appearances; and
  - You may practice under this rule indefinitely, but you must renew your registration annually

California Rules of Court 9.47 and 9.48

- Requirements (litigators and transactional attorneys):
  - Member in good standing of your state's bar;
  - Maintain an office outside of California, and have no residence or substantial business in California; and
  - Indicate on your website and in advertisements that you are not admitted in California
- By practicing law on a temporary basis in California, you subject yourself to California's legal ethics rules and the disciplinary authority of the California State Bar
- In addition, you remain subject to the legal ethics rules and disciplinary authority of your home state pursuant to your state's equivalent of Model Rule 8.5

California Rules of Court 9.47

- Limitations for litigators:
  - Your legal work must be in anticipation of filing a lawsuit in California or part of a lawsuit pending in your state; and
  - You may perform legal work until the lawsuit is filed in California, after which you must cease practicing or obtain *pro hac vice* admission from the California court

California Rules of Court 9.48

- Limitations for transactional lawyers:
  - Your legal work must be limited to a transaction or non-litigation matter; and
  - A material aspect of the transaction or matter must take place in your state, or your legal work must relate to an issue of federal law or to the law of a state other than California

California Rules of Court 9.45-9.48

- Rule of Court 9.45 – Legal Services Attorneys
- Rule of Court 9.46 –In-House Counsel
- Rule of Court 9.47 – Litigators
- Rule of Court 9.48 – Transactional Attorneys
- Note: Because California has no equivalent of Model Rule 5.5(c)(1), association with California counsel is not permitted except in connection with *pro hac vice* admission

New York Rules of Court 522 and 523

- Rule of Court 523 – Model Rule 5.5 equivalent
- Rule of Court 522.8 – Legal Services Attorneys
- Rule of Court 522.1 –In-House Counsel
- Rule of Prof. Conduct 8.5 – Model Rule 5.5 equivalent
- Note: Rule of Court 523 allows association with New York counsel

New York Rules of Court 522.8 and 522.1

- Under Rule. 522.8, legal services lawyers in New York are required to register as in-house counsel, but once they do:
  - They may appear in court without seeking *pro hac vice* admission and at the court's discretion as long as they notify the court that they are not admitted in New York;
  - They are not subject to special supervision requirements, nor does their leave to practice law expire after three years
- Under Rule 522.1, in-house lawyers in New York share the same requirements and have the same benefits as in-house lawyers in California lawyers except that:
  - They can be foreign lawyers, i.e., lawyers admitted in another country such as Canada or the United Kingdom, while California only permits them to be "foreign legal consultants"; and
  - They may represent individuals as long as they are employees, officers or directors of the lawyer's employer, and as long as the representation is in connection with matters relating to the lawyer's work for the employer

Out-of-State Counsel Responsibilities

- When you are the out-of-state lawyer associating with or being sponsored by a in-state lawyer, you must:
- Learn the rules, including the legal ethics rules, that are applicable to the state as they may differ significantly from your state; and
- Comply with those rules
- Don't Forget: Despite adopting rules similar to Model Rule 5.5, California does not permit out-of-state lawyers to associate with local lawyers, except in connection with *pro hac vice* admission.

California Rule of Court 9.40

- To be eligible for pro hac vice admission, the out-of-state lawyer must:
  - Be a member in good standing of another state and not be disbarred in any state; and
  - Include in the application a California lawyer as the attorney of record, pay a fee and serve a copy of the application on the State Bar of California
- The court has the discretion to grant or deny the application, and absent special circumstances, repeated pro hac vice appearances by a lawyer is cause for denial of a pro hac vice application
- The court also should reject a pro hac vice application if the lawyer resides in California, is regularly employed in California or is regularly engaged in substantial business, professional or other activities in California
- Don't Forget: if you are granted leave to appear *pro hac vice* in California, you become subject to California's legal ethics rules, the rules of the court where you are admitted and the disciplinary authority of the California State Bar

New York Rule of Court 520.11

- Pro hac vice admission may be granted "in the discretion of any court of record to participate in any matter in which the attorney is employed"
- The only requirement is that the lawyer associate with local New York counsel for the duration of any pre-trial and trial proceedings
- Unlike California, New York does not have:
  - A non-residency requirement; or
  - An express prohibition on admitting lawyers pro hac vice simply because they repeatedly been granted leave to appear *pro hac vice* in the past
- New York allows foreign lawyers to be admitted *pro hac vice* at the discretion of the court, unlike California that permits only U.S. lawyers to apply for *pro hac vice* admission

New York Rule of Court 523.1(3)(i)

- Out-of-state lawyers to associate with local New York counsel as contemplated by Model Rule 5.5
- There are no application or registration requirements for association with local New York counsel under Rule 523.1(3)(i).
- Don't Forget: if you associate with local counsel in New York, or are granted leave to appear *pro hac vice* in New York, you become subject to New York's legal ethics rules, the rules of the court where you are admitted (if applicable) and the disciplinary authority of the New York State Bar

ABA Model Rule 5.5

(d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates, are not services for which the forum requires pro hac vice admission; and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or

(2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.

Four Key Pieces of Advice

No. 2

There is No Such Thing as a Free Lunch.

ABA Model Rule 8.5

(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 provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

ABA Model Rule 8.5

(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 matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the 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 shall not be 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.

Four Key Pieces of Advice

No. 3

Litigators Beware.

California Rules of Court 9.47 and 9.48

- Requirements (litigators and transactional attorneys):
  - Member in good standing of your state's bar;
  - Maintain an office outside of California, and have no residence or substantial business in California; and
  - Indicate on your website and in advertisements that you are not admitted in California
- By practicing law on a temporary basis in California, you subject yourself to California's legal ethics rules and the disciplinary authority of the California State Bar
- In addition, you remain subject to the legal ethics rules and disciplinary authority of your home state pursuant to your state's equivalent of Model Rule 8.5

California Rules of Court 9.47

- Limitations for litigators:
  - Your legal work must be in anticipation of filing a lawsuit in California or part of a lawsuit pending in your state; and
  - You may perform legal work until the lawsuit is filed in California, after which you must cease practicing or obtain *pro hac vice* admission from the California court

New York Rule of Court 520.11

- Pro hac vice admission may be granted "in the discretion of any court of record to participate in any matter in which the attorney is employed"
- The only requirement is that the lawyer associate with local New York counsel for the duration of any pre-trial and trial proceedings
- Unlike California, New York does not have:
  - A non-residency requirement; or
  - An express prohibition on admitting lawyers pro hac vice simply because they repeatedly been granted leave to appear *pro hac vice* in the past
- New York allows foreign lawyers to be admitted *pro hac vice* at the discretion of the court, unlike California that permits only U.S. lawyers to apply for *pro hac vice* admission

New York Rule of Court 523.1(3)(i)

- Out-of-state lawyers to associate with local New York counsel as contemplated by Model Rule 5.5
- There are no application or registration requirements for association with local New York counsel under Rule 523.1(3)(i).
- Don't Forget: if you associate with local counsel in New York, or are granted leave to appear *pro hac vice* in New York, you become subject to New York's legal ethics rules, the rules of the court where you are admitted (if applicable) and the disciplinary authority of the New York State Bar

Remote or Hybrid Work

- In December 2020, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Ethics Opinion No. 495:
- "Lawyers may remotely practice the law of the jurisdictions in which they are licensed while physically present in a jurisdiction in which they are not admitted if the local jurisdiction has not determined that the conduct is the unlicensed or unauthorized practice of law and if they do not hold themselves out as being licensed to practice in the local jurisdiction, do not advertise or otherwise hold out as having an office in the local jurisdiction, and do not provide or offer to provide legal services in the local jurisdiction."

Remote or Hybrid Work

As of September 2024, nearly thirty states (including New York, Maryland, Massachusetts, Connecticut, Illinois, Florida and California) and the District of Columbia have confirmed that remote work by lawyers in their states does not constitute the unauthorized practice of law as long as the lawyers follow the rules outlined by the ABA in Formal Opinion No. 495

Four Key Pieces of Advice

No. 4

Look Before You Leap.

Four Key Pieces of Advice

No. 1 When In Doubt, Register.

No. 2. There is No Such Thing as a Free Lunch

No. 3 Litigators Beware.

No. 4 Look Before You Leap.

The End

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Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law

Law Firms And Associations
Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

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

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

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c) (2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates, are not services for which the forum requires pro hac vice admission; and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or

(2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.

(e) For purposes of paragraph (d):

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

(2) the person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction must be authorized to practice under this rule by, in the exercise of its discretion, [the highest court of this jurisdiction].

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Comment on Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law

Law Firms And Associations
Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law - Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.

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

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b)(1) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is

admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).

[5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services 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 (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a U.S. or foreign lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. Paragraph (d) also applies to lawyers admitted in a foreign jurisdiction. The word "admitted" in paragraphs (c), (d) and (e) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This 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)(2), 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 that authority.

[10] Paragraph (c)(2) also 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 temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits 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 alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or

have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law. Lawyers desiring to provide pro bono legal services on a temporary basis in a jurisdiction that has been affected by a major disaster, but in which they are not otherwise authorized to practice law, as well as lawyers from the affected jurisdiction who seek to practice law temporarily in another jurisdiction, but in which they are not otherwise authorized to practice law, should consult the [*Model Court Rule on Provision of Legal Services Following Determination of Major Disaster*].

[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States or a foreign jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, or the equivalent thereof, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law. Pursuant to paragraph (c) of this Rule, a lawyer admitted in any U.S. jurisdiction may also provide legal services in this jurisdiction on a temporary basis. See also *Model Rule on Temporary Practice by Foreign Lawyers*. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another United States or foreign jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a U.S. or foreign lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the

lawyer's qualifications and the quality of the lawyer's work. To further decrease any risk to the client, when advising on the domestic law of a United States jurisdiction or on the law of the United States, the foreign lawyer authorized to practice under paragraph (d)(1) of this Rule needs to base that advice on the advice of a lawyer licensed and authorized by the jurisdiction to provide it.

[17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education. See *Model Rule for Registration of In-House Counsel*.

[18] Paragraph (d)(2) recognizes that a U.S. or foreign lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent. See, e.g., *Model Rule on Practice Pending Admission*.

[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

[20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4(b).

[21] Paragraphs (c) and (d) do not authorize communications advertising legal services in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services in this jurisdiction is governed by Rules 7.1 to 7.5**.**

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Rule 8.5: Disciplinary Authority; Choice of Law

Maintaining The Integrity Of The Profession
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 provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction 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 matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the 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 shall not be 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.

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Comment on Rule 8.5

Maintaining The Integrity Of The Profession
Rule 8.5 Disciplinary Authority; Choice Of Law - Comment

Disciplinary Authority

[1] It is longstanding law that the 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 provide or offer to provide 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, ABA Model Rules for Lawyer Disciplinary Enforcement. A lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.5(a) appoints an official to be designated by this Court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.

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. Additionally, the lawyer's conduct may 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, (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 protection from discipline 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 pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. 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 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 shall not be subject to discipline under this Rule. With respect to conflicts of interest, in determining a lawyer's reasonable belief under paragraph (b)(2), a written agreement between the lawyer and client that reasonably specifies a particular jurisdiction as within the scope of that paragraph may be considered if the agreement was obtained with the client's informed consent confirmed in the agreement.

[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.

[7] The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.

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Cal.Rules of Court, Rule 9.45
Formerly cited as CA ST MISC Rule 964

Rule 9.45. Registered legal services attorneys

Currentness

(a) Definitions

The following definitions apply in this rule:

(1) "Qualifying legal services provider" means either of the following, provided that the qualifying legal services provider follows quality-control procedures approved by the State Bar of California:

(A) A nonprofit entity incorporated and operated exclusively in California that as its primary purpose and function provides legal services without charge in civil matters to indigent persons, especially underserved client groups, such as the elderly, persons with disabilities, juveniles, and non-English-speaking persons; or

(B) A program operated exclusively in California by a nonprofit law school approved by the American Bar Association or accredited by the State Bar of California that has operated for at least two years at a cost of at least $20,000 per year as an identifiable law school unit with a primary purpose and function of providing legal services without charge to indigent persons.

(2) "Active member in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency" means an attorney who:

(A) Is a member in good standing of the entity governing the practice of law in each jurisdiction in which the member is licensed to practice law;

(B) Remains an active member in good standing of the entity governing the practice of law in at least one United States state, jurisdiction, possession, territory, or dependency other than California while practicing law as a registered legal services attorney in California; and

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(C) Has not been disbarred, has not resigned with charges pending, or is not suspended from practicing law in any other jurisdiction.

(b) Scope of practice

Subject to all applicable rules, regulations, and statutes, an attorney practicing law under this rule may practice law in California only while working, with or without pay, at a qualifying legal services provider, as defined in this rule, and, at that institution and only on behalf of its clients, may engage, under supervision, in all forms of legal practice that are permissible for a member of the State Bar of California.

(c) Requirements

For an attorney to practice law under this rule, the attorney must:

(1) Be an active member in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency;

(2) Register with the State Bar of California and file an Application for Determination of Moral Character;

(3) Meet all of the requirements for admission to the State Bar of California, except that the attorney:

(A) Need not take the California bar examination or the Multistate Professional Responsibility Examination; and

(B) May practice law while awaiting the result of his or her Application for Determination of Moral Character;

(4) Comply with the rules adopted by the Board of Governors relating to the State Bar Registered Legal Services Attorney Program;

(5) Practice law exclusively for a single qualifying legal services provider, except that, if so qualified, an attorney may, while practicing under this rule, simultaneously practice law as registered in-house counsel;

(6) Practice law under the supervision of an attorney who is employed by the qualifying legal services provider and who is a member in good standing of the State Bar of California;

(7) Abide by all of the laws and rules that govern members of the State Bar of California, including the Minimum Continuing Legal Education (MCLE) requirements;

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(8) Satisfy in his or her first year of practice under this rule all of the MCLE requirements, including ethics education, that members of the State Bar of California must complete every three years; and

(9) Not have taken and failed the California bar examination within five years immediately preceding application to register under this rule.

(d) Application

To qualify to practice law as a registered legal services attorney, the attorney must:

(8) (1) Register as an attorney applicant and file an Application for Determination of Moral Character with the Committee of Bar Examiners;

(2) Submit to the State Bar of California a declaration signed by the attorney agreeing that he or she will be subject to the disciplinary authority of the Supreme Court of California and the State Bar of California and attesting that he or she will not practice law in California other than under supervision at a qualifying legal services provider during the time he or she practices law as a registered legal services attorney in California, except that, if so qualified, the attorney may, while practicing under this rule, simultaneously practice law as registered in-house counsel; and

(3) Submit to the State Bar of California a declaration signed by a qualifying supervisor on behalf of the qualifying legal services provider in California attesting that the applicant will work, with or without pay, as an attorney for the organization; that the applicant will be supervised as specified in this rule; and that the qualifying legal services provider and the supervising attorney assume professional responsibility for any work performed by the applicant under this rule.

(e) Duration of practice

An attorney may practice for no more than a total of three years under this rule.

(f) Application and registration fees

The State Bar of California may set appropriate application fees and initial and annual registration fees to be paid by registered legal services attorneys.

(g) State Bar Registered Legal Services Attorney Program

The State Bar may establish and administer a program for registering California legal services attorneys under rules adopted by the Board of Governors of the State Bar.

(h) Supervision

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To meet the requirements of this rule, an attorney supervising a registered legal services attorney:

(1) Must be an active member in good standing of the State Bar of California;

(2) Must have actively practiced law in California and been a member in good standing of the State Bar of California for at least the two years immediately preceding the time of supervision;

(3) Must have practiced law as a full-time occupation for at least four years;

(4) Must not supervise more than two registered legal services attorneys concurrently;

(5) Must assume professional responsibility for any work that the registered legal services attorney performs under the supervising attorney's supervision;

(6) Must assist, counsel, and provide direct supervision of the registered legal services attorney in the activities authorized by this rule and review such activities with the supervised attorney, to the extent required for the protection of the client;

(7) Must read, approve, and personally sign any pleadings, briefs, or other similar documents prepared by the registered legal services attorney before their filing, and must read and approve any documents prepared by the registered legal services attorney for execution by any person who is not a member of the State Bar of California before their submission for execution; and

(8) May, in his or her absence, designate another attorney meeting the requirements of (1) through (7) to provide the supervision required under this rule.

(i) Inherent power of Supreme Court

Nothing in this rule may be construed as affecting the power of the Supreme Court of California to exercise its inherent jurisdiction over the practice of law in California.

(j) Effect of rule on multijurisdictional practice

Nothing in this rule limits the scope of activities permissible under existing law by attorneys who are not members of the State Bar of California.

Credits
(Formerly Rule 964, adopted, eff. Nov. 15, 2004. Renumbered Rule 9.45 and amended, eff. Jan. 1, 2007.)

Cal. Rules of Court, Rule 9.45, CA ST PRACTICE Rule 9.45

California Rules of Court, California Rules of Professional Conduct, and California Code of Judicial Ethics are current with amendments received through December 15, 2017. California Supreme Court, California Courts of Appeal, Guidelines for the Commission of Judicial Appointments, Commission on Judicial Performance, and all other Rules of the State Bar of California are current with amendments received through December 15, 2017.

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Division 4. Appearances and Practice by Individuals Who Are Not Members of the State Bar of California (Refs & Annos)

Cal.Rules of Court, Rule 9.46
Formerly cited as CA ST MISC Rule 965

Rule 9.46. Registered in-house counsel

Currentness

(a) Definitions

The following definitions apply to terms used in this rule:

(1) “Qualifying institution” means a corporation, a partnership, an association, or other legal entity, including its subsidiaries and organizational affiliates. Neither a governmental entity nor an entity that provides legal services to others can be a qualifying institution for purposes of this rule. A qualifying institution must:

(A) Employ at least 10 employees full time in California; or

(B) Employ in California an attorney who is an active member in good standing of the State Bar of California.

(2) “Active member in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency” means an attorney who meets all of the following criteria:

(A) Is a member in good standing of the entity governing the practice of law in each jurisdiction in which the member is licensed to practice law;

(B) Remains an active member in good standing of the entity governing the practice of law in at least one United States state, jurisdiction, possession, territory, or dependency, other than California, while practicing law as registered in-house counsel in California; and

(C) Has not been disbarred, has not resigned with charges pending, or is not suspended from practicing law in any other jurisdiction.

(b) Scope of practice

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Subject to all applicable rules, regulations, and statutes, an attorney practicing law under this rule is:

(1) Permitted to provide legal services in California only to the qualifying institution that employs him or her;

(2) Not permitted to make court appearances in California state courts or to engage in any other activities for which *pro hac vice* admission is required if they are performed in California by an attorney who is not a member of the State Bar of California; and

(3) Not permitted to provide personal or individual representation to any customers, shareholders, owners, partners, officers, employees, servants, or agents of the qualifying institution.

(c) Requirements

For an attorney to practice law under this rule, the attorney must:

(1) Be an active member in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency;

(2) Register with the State Bar of California and file an Application for Determination of Moral Character;

(3) Meet all of the requirements for admission to the State Bar of California, except that the attorney:

(A) Need not take the California bar examination or the Multistate Professional Responsibility Examination; and

(B) May practice law while awaiting the result of his or her Application for Determination of Moral Character;

(4) Comply with the rules adopted by the Board of Governors relating to the State Bar Registered In-House Counsel Program;

(5) Practice law exclusively for a single qualifying institution, except that, while practicing under this rule, the attorney may, if so qualified, simultaneously practice law as a registered legal services attorney;

(6) Abide by all of the laws and rules that govern members of the State Bar of California, including the Minimum Continuing Legal Education (MCLE) requirements;

(7) Satisfy in his or her first year of practice under this rule all of the MCLE requirements, including ethics education, that members of the State Bar of California must complete every three years and, thereafter, satisfy the MCLE requirements applicable to all members of the State Bar; and

(8) Reside in California.

(d) Application

To qualify to practice law as registered in-house counsel, an attorney must:

(1) Register as an attorney applicant and file an Application for Determination of Moral Character with the Committee of Bar Examiners;

(2) Submit to the State Bar of California a declaration signed by the attorney agreeing that he or she will be subject to the disciplinary authority of the Supreme Court of California and the State Bar of California and attesting that he or she will not practice law in California other than on behalf of the qualifying institution during the time he or she is registered in-house counsel in California, except that if so qualified, the attorney may, while practicing under this rule, simultaneously practice law as a registered legal services attorney; and

(3) Submit to the State Bar of California a declaration signed by an officer, a director, or a general counsel of the applicant's employer, on behalf of the applicant's employer, attesting that the applicant is employed as an attorney for the employer, that the nature of the employment conforms to the requirements of this rule, that the employer will notify the State Bar of California within 30 days of the cessation of the applicant's employment in California, and that the person signing the declaration believes, to the best of his or her knowledge after reasonable inquiry, that the applicant qualifies for registration under this rule and is an individual of good moral character.

(e) Duration of practice

A registered in-house counsel must renew his or her registration annually. There is no limitation on the number of years in-house counsel may register under this rule. Registered in-house counsel may practice law under this rule only for as long as he or she remains employed by the same qualifying institution that provided the declaration in support of his or her application. If an attorney practicing law as registered in-house counsel leaves the employment of his or her employer or changes employers, he or she must notify the State Bar of California within 30 days. If an attorney wishes to practice law under this rule for a new employer, he or she must first register as in-house counsel for that employer.

(f) Eligibility

An application to register under this rule may not be denied because:

(1) The attorney applicant has practiced law in California as in-house counsel before the effective date of this rule.

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(2) The attorney applicant is practicing law as in-house counsel at or after the effective date of this rule, provided that the attorney applies under this rule within six months of its effective date.

(g) Application and registration fees

The State Bar of California may set appropriate application fees and initial and annual registration fees to be paid by registered in-house counsel.

(h) State Bar Registered In-House Counsel Program

The State Bar must establish and administer a program for registering California in-house counsel under rules adopted by the Board of Governors.

(i) Inherent power of Supreme Court

Nothing in this rule may be construed as affecting the power of the Supreme Court of California to exercise its inherent jurisdiction over the practice of law in California.

(j) Effect of rule on multijurisdictional practice

Nothing in this rule limits the scope of activities permissible under existing law by attorneys who are not members of the State Bar of California.

Credits
(Formerly Rule 965, adopted, eff. Nov. 15, 2004. Renumbered Rule 9.46 and amended, eff. Jan. 1, 2007.)

Cal. Rules of Court, Rule 9.46, CA ST PRACTICE Rule 9.46
California Rules of Court, California Rules of Professional Conduct, and California Code of Judicial Ethics are current with amendments received through December 15, 2017. California Supreme Court, California Courts of Appeal, Guidelines for the Commission of Judicial Appointments, Commission on Judicial Performance, and all other Rules of the State Bar of California are current with amendments received through December 15, 2017.

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Division 4. Appearances and Practice by Individuals Who Are Not Members of the State Bar of California (Refs & Annos)

Cal.Rules of Court, Rule 9.47
Formerly cited as CA ST MISC Rule 966

Rule 9.47. Attorneys practicing law temporarily in California as part of litigation

Currentness

(a) Definitions

The following definitions apply to the terms used in this rule:

(1) "A formal legal proceeding" means litigation, arbitration, mediation, or a legal action before an administrative decision-maker.

(2) "Authorized to appear" means the attorney is permitted to appear in the proceeding by the rules of the jurisdiction in which the formal legal proceeding is taking place or will be taking place.

(3) "Active member in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency" means an attorney who meets all of the following criteria:

(A) Is a member in good standing of the entity governing the practice of law in each jurisdiction in which the member is licensed to practice law;

(B) Remains an active member in good standing of the entity governing the practice of law in at least one United States state, jurisdiction, possession, territory, or dependency while practicing law under this rule; and

(C) Has not been disbarred, has not resigned with charges pending, or is not suspended from practicing law in any other jurisdiction.

(b) Requirements

For an attorney to practice law under this rule, the attorney must:

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(1) Maintain an office in a United States jurisdiction other than California and in which the attorney is licensed to practice law;

(2) Already be retained by a client in the matter for which the attorney is providing legal services in California, except that the attorney may provide legal advice to a potential client, at the potential client's request, to assist the client in deciding whether to retain the attorney;

(3) Indicate on any Web site or other advertisement that is accessible in California either that the attorney is not a member of the State Bar of California or that the attorney is admitted to practice law only in the states listed; and

(4) Be an active member in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency.

(c) Permissible activities

An attorney meeting the requirements of this rule, who complies with all applicable rules, regulations, and statutes, is not engaging in the unauthorized practice of law in California if the attorney's services are part of:

(1) A formal legal proceeding that is pending in another jurisdiction and in which the attorney is authorized to appear;

(2) A formal legal proceeding that is anticipated but is not yet pending in California and in which the attorney reasonably expects to be authorized to appear;

(3) A formal legal proceeding that is anticipated but is not yet pending in another jurisdiction and in which the attorney reasonably expects to be authorized to appear; or

(4) A formal legal proceeding that is anticipated or pending and in which the attorney's supervisor is authorized to appear or reasonably expects to be authorized to appear.

The attorney whose anticipated authorization to appear in a formal legal proceeding serves as the basis for practice under this rule must seek that authorization promptly after it becomes possible to do so. Failure to seek that authorization promptly, or denial of that authorization, ends eligibility to practice under this rule.

(d) Restrictions

To qualify to practice law in California under this rule, an attorney must not:

(1) Hold out to the public or otherwise represent that he or she is admitted to practice law in California;

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(2) Establish or maintain a resident office or other systematic or continuous presence in California for the practice of law;

(3) Be a resident of California;

(4) Be regularly employed in California;

(5) Regularly engage in substantial business or professional activities in California; or

(6) Have been disbarred, have resigned with charges pending, or be suspended from practicing law in any other jurisdiction.

(e) Conditions

By practicing law in California under this rule, an attorney agrees that he or she is providing legal services in California subject to:

(1) The jurisdiction of the State Bar of California;

(2) The jurisdiction of the courts of this state to the same extent as is a member of the State Bar of California; and

(3) The laws of the State of California relating to the practice of law, the State Bar Rules of Professional Conduct, the rules and regulations of the State Bar of California, and these rules.

(f) Inherent power of Supreme Court

Nothing in this rule may be construed as affecting the power of the Supreme Court of California to exercise its inherent jurisdiction over the practice of law in California.

(g) Effect of rule on multijurisdictional practice

Nothing in this rule limits the scope of activities permissible under existing law by attorneys who are not members of the State Bar of California.

Credits

(Formerly Rule 966, adopted, eff. Nov. 15, 2004. Renumbered Rule 9.47 and amended, eff. Jan. 1, 2007.)

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Cal. Rules of Court, Rule 9.47, CA ST PRACTICE Rule 9.47

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Division 4. Appearances and Practice by Individuals Who Are Not Members of the State Bar of California (Refs & Annos)

Cal.Rules of Court, Rule 9.48
Formerly cited as CA ST MISC Rule 967

Rule 9.48. Nonlitigating attorneys temporarily in California to provide legal services

Currentness

(a) Definitions

The following definitions apply to terms used in this rule:

(1) "A transaction or other nonlitigation matter" includes any legal matter other than litigation, arbitration, mediation, or a legal action before an administrative decision-maker.

(2) "Active member in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency" means an attorney who meets all of the following criteria:

(A) Is a member in good standing of the entity governing the practice of law in each jurisdiction in which the member is licensed to practice law;

(B) Remains an active member in good standing of the entity governing the practice of law in at least one United States state, jurisdiction, possession, territory, or dependency other than California while practicing law under this rule; and

(C) Has not been disbarred, has not resigned with charges pending, or is not suspended from practicing law in any other jurisdiction.

(b) Requirements

For an attorney to practice law under this rule, the attorney must:

(1) Maintain an office in a United States jurisdiction other than California and in which the attorney is licensed to practice law;

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(2) Already be retained by a client in the matter for which the attorney is providing legal services in California, except that the attorney may provide legal advice to a potential client, at the potential client's request, to assist the client in deciding whether to retain the attorney;

(3) Indicate on any Web site or other advertisement that is accessible in California either that the attorney is not a member of the State Bar of California or that the attorney is admitted to practice law only in the states listed; and

(4) Be an active member in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency.

(c) Permissible activities

An attorney who meets the requirements of this rule and who complies with all applicable rules, regulations, and statutes is not engaging in the unauthorized practice of law in California if the attorney:

(1) Provides legal assistance or legal advice in California to a client concerning a transaction or other nonlitigation matter, a material aspect of which is taking place in a jurisdiction other than California and in which the attorney is licensed to provide legal services;

(2) Provides legal assistance or legal advice in California on an issue of federal law or of the law of a jurisdiction other than California to attorneys licensed to practice law in California; or

(3) Is an employee of a client and provides legal assistance or legal advice in California to the client or to the client's subsidiaries or organizational affiliates.

(d) Restrictions

To qualify to practice law in California under this rule, an attorney must not:

(1) Hold out to the public or otherwise represent that he or she is admitted to practice law in California;

(2) Establish or maintain a resident office or other systematic or continuous presence in California for the practice of law;

(3) Be a resident of California;

(4) Be regularly employed in California;

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(5) Regularly engage in substantial business or professional activities in California; or

(6) Have been disbarred, have resigned with charges pending, or be suspended from practicing law in any other jurisdiction.

(e) Conditions

By practicing law in California under this rule, an attorney agrees that he or she is providing legal services in California subject to:

(1) The jurisdiction of the State Bar of California;

(2) The jurisdiction of the courts of this state to the same extent as is a member of the State Bar of California; and

(3) The laws of the State of California relating to the practice of law, the State Bar Rules of Professional Conduct, the rules and regulations of the State Bar of California, and these rules.

(f) Scope of practice

An attorney is permitted by this rule to provide legal assistance or legal services concerning only a transaction or other nonlitigation matter.

(g) Inherent power of Supreme Court

Nothing in this rule may be construed as affecting the power of the Supreme Court of California to exercise its inherent jurisdiction over the practice of law in California.

(h) Effect of rule on multijurisdictional practice

Nothing in this rule limits the scope of activities permissible under existing law by attorneys who are not members of the State Bar of California.

Credits
(Formerly Rule 967, adopted, eff. Nov. 15, 2004. Renumbered Rule 9.48 and amended, eff. Jan. 1, 2007.)

Cal. Rules of Court, Rule 9.48, CA ST PRACTICE Rule 9.48
California Rules of Court, California Rules of Professional Conduct, and California Code of Judicial Ethics are current with amendments received through December 15, 2017. California Supreme Court, California Courts of Appeal,

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West's Annotated California Codes
Rules of the State Bar of California (Refs & Annos)
California Rules of Professional Conduct (Refs & Annos)
Chapter 1. Professional Integrity in General

Prof.Conduct, Rule 1-100

Rule 1-100. Rules of Professional Conduct, in General

Currentness

(A) Purpose and Function.

The following rules are intended to regulate professional conduct of members of the State Bar through discipline. They have been adopted by the Board of Governors of the State Bar of California and approved by the Supreme Court of California pursuant to Business and Professions Code sections 6076 and 6077 to protect the public and to promote respect and confidence in the legal profession. These rules together with any standards adopted by the Board of Governors pursuant to these rules shall be binding upon all members of the State Bar.

For a willful breach of any of these rules, the Board of Governors has the power to discipline members as provided by law.

The prohibition of certain conduct in these rules is not exclusive. Members are also bound by applicable law including the State Bar Act (Bus. & Prof.Code, § 6000 et seq.) and opinions of California courts. Although not binding, opinions of ethics committees in California should be consulted by members for guidance on proper professional conduct. Ethics opinions and rules and standards promulgated by other jurisdictions and bar associations may also be considered.

These rules are not intended to create new civil causes of action. Nothing in these rules shall be deemed to create, augment, diminish, or eliminate any substantive legal duty of lawyers or the non-disciplinary consequences of violating such a duty.

(B) Definitions.

(1) "Law Firm" means:

(a) two or more lawyers whose activities constitute the practice of law, and who share its profits, expenses, and liabilities; or

(b) a law corporation which employs more than one lawyer; or

(c) a division, department, office, or group within a business entity, which includes more than one lawyer who performs legal services for the business entity; or

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(d) a publicly funded entity which employs more than one lawyer to perform legal services.

(2) "Member" means a member of the State Bar of California.

(3) "Lawyer" means a member of the State Bar of California or a person who is admitted in good standing of and eligible to practice before the bar of any United States court or the highest court of the District of Columbia or any state, territory, or insular possession of the United States, or is licensed to practice law in, or is admitted in good standing and eligible to practice before the bar of the highest court of, a foreign country or any political subdivision thereof.

(4) "Associate" means an employee or fellow employee who is employed as a lawyer.

(5) "Shareholder" means a shareholder in a professional corporation pursuant to Business and Professions Code section 6160 et seq.

(C) Purpose of Discussions.

Because it is a practical impossibility to convey in black letter form all of the nuances of these disciplinary rules, the comments contained in the Discussions of the rules, while they do not add independent basis for imposing discipline, are intended to provide guidance for interpreting the rules and practicing in compliance with them.

(D) Geographic Scope of Rules.

(1) As to members:

These rules shall govern the activities of members in and outside this state, except as members lawfully practicing outside this state may be specifically required by a jurisdiction in which they are practicing to follow rules of professional conduct different from these rules.

(2) As to lawyers from other jurisdictions who are not members:

These rules shall also govern the activities of lawyers while engaged in the performance of lawyer functions in this state; but nothing contained in these rules shall be deemed to authorize the performance of such functions by such persons in this state except as otherwise permitted by law.

(E) These rules may be cited and referred to as "Rules of Professional Conduct of the State Bar of California."

DISCUSSION

The Rules of Professional Conduct are intended to establish the standards for members for purposes of discipline. (See *Ames v. State Bar* (1973) 8 Cal.3d 910 [106 Cal.Rptr. 489].) The fact that a member has engaged

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in conduct that may be contrary to these rules does not automatically give rise to a civil cause of action. (See *Noble v. Sears, Roebuck & Co.* (1973) 33 Cal.App.3d 654 [109 Cal.Rptr. 269]; *Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal.App.3d 1324 [231 Cal.Rptr. 355].) These rules are not intended to supercede existing law relating to members in non-disciplinary contexts. (See, e.g., *Klemm v. Superior Court* (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509] (motion for disqualification of counsel due to a conflict of interest); *Academy of California Optometrists, Inc. v. Superior Court* (1975) 51 Cal.App.3d 999 [124 Cal.Rptr. 668] (duty to return client files); *Chronometrics, Inc. v. Sysgen, Inc.* (1980) 110 Cal.App.3d 597 [168 Cal.Rptr. 196] (disqualification of member appropriate remedy for improper communication with adverse party).)

Law firm, as defined by subparagraph (B)(1), is not intended to include an association of lawyers who do not share profits, expenses, and liabilities. The subparagraph is not intended to imply that a law firm may include a person who is not a member in violation of the law governing the unauthorized practice of law.

Credits

(Adopted Nov. 28, 1988, eff. May 27, 1989. As amended, eff. Sept. 14, 1992.)

Notes of Decisions (43)

Prof. Conduct, Rule 1-100, CA ST RPC Rule 1-100

California Rules of Court, California Rules of Professional Conduct, and California Code of Judicial Ethics are current with amendments received through January 1, 2018. California Supreme Court, California Courts of Appeal, Guidelines for the Commission of Judicial Appointments, Commission on Judicial Performance, and all other Rules of the State Bar of California are current with amendments received through January 1, 2018.

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Part 522 - Rules for the Registration of In-House Counsel

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§ 522.1 Registration of In-House Counsel

(a) In-House Counsel defined. An in-house counsel is an attorney who is employed full time in this State by a non-governmental corporation, partnership, association, or other legal entity, including its subsidiaries and organizational affiliates, that is not itself engaged in the practice of law or the rendering of legal services outside such organization.

(b) In its discretion, the Appellate Division may register as in-house counsel an applicant who:

(1) (i) has been admitted to practice in the highest law court in any other state or territory of the United States or in the District of Columbia; or (ii) is a member in good standing of a recognized legal profession in a foreign non-United States jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation by a duly constituted professional body or public authority;

(2) is currently admitted to the bar as an active member in good standing in at least one other jurisdiction, within or outside the United States, which would similarly permit an attorney admitted to practice in this State to register as in-house counsel; and

(3) possesses the good moral character and general fitness requisite for a member of the bar of this State.

§ 522.2 Proof required

An applicant under this Part shall file with the Clerk of the Appellate Division of the department in which the applicant resides, is employed or intends to be employed as in-house counsel:

(a) a certificate of good standing from each jurisdiction in which the applicant is licensed to practice law;

(b) a letter from each such jurisdiction's grievance committee, or other body entertaining complaints against attorneys, certifying whether charges have been filed with or by such committee or body against the applicant, and, if so, the substance of the charges and the disposition thereof;

(c) an affidavit certifying that the applicant:

(1) performs or will perform legal services in this State solely and exclusively as provided in section 522.4; and

(2) agrees to be subject to the disciplinary authority of this State and to comply with the New York Rules of Professional Conduct (22 NYCRR Part 1200) and the rules governing the conduct of attorneys in the judicial department where the attorney's registration will be issued; and

(d) an affidavit or affirmation signed by an officer, director, or general counsel of the applicant's employer, on behalf of said employer, attesting that the applicant is or will be employed as an attorney for the employer and that the nature of the employment conforms to the requirements of this Part.

(e) Documents in languages other than English shall be submitted with a certified English translation.

§ 522.3 Compliance

An attorney registered as in-house counsel under this Part shall:

(a) remain an active member in good standing in at least one state or territory of the United States or in the District of Columbia or a foreign jurisdiction as described in section 522.1(b)(1);

(b) promptly notify the appropriate Appellate Division department of a disposition made in a disciplinary proceeding in another jurisdiction;

(c) register with the Office of Court Administration and comply with the appropriate biennial registration requirements; and

(d) except as specifically limited herein, abide by all of the laws and rules that govern attorneys admitted to the practice of law in this State.

§ 522.4 Scope of legal services

An attorney registered as in-house counsel under this Part shall:

(a) provide legal services in this State only to the single employer entity or its organizational affiliates, including entities that control, are controlled by, or are under common control with the employer entity, and to employees, officers and directors of such entities, but only on matters directly related to the attorney's work for the employer entity, and to the extent consistent with the New York Rules of Professional Conduct;

(b) not make appearances in this State before a tribunal, as that term is defined in the New York Rules of Professional Conduct (22 NYCRR 1200.0 Rule 1.0[w]) or engage in any activity for which *pro hac vice* admission would be required if engaged in by an attorney who is not admitted to the practice of law in this State;

(c) not provide personal or individual legal services to any customers, shareholders, owners, partners, officers, employees or agents of the identified employer; and

(d) not hold oneself out as an attorney admitted to practice in this State except on the employer's letterhead with a limiting designation.

§ 522.5 Termination of registration

(a) Registration as in-house counsel under this Part shall terminate when:

(1) the attorney ceases to be an active member in another jurisdiction, as required in section 522.1(b)(2); or

(2) the attorney ceases to be an employee of the employer listed on the attorney's application, provided, however, that if such attorney, within 30 days of ceasing to be such an employee, becomes employed by another employer for which such attorney shall perform legal services as in-house counsel, such attorney may request continued registration under this Part by filing within said 30-day period with the appropriate Appellate Division department an affidavit to such effect, stating the dates on which the prior employment ceased and the new employment commenced, identifying the new employer and reaffirming that the attorney will provide legal services in this State solely and exclusively as permitted in section 522.4. The attorney shall also file an affidavit or affirmation of the new employer as described in section 522.2(d) and shall file an amended statement within said 30-day period with the Office of Court Administration.

(b) In the event that the employment of an attorney registered under this Part ceases with no subsequent employment by a successor employer, the attorney, within 30 days thereof, shall file with the Appellate Division department where registered a statement to such effect, stating the date that employment ceased. Noncompliance with this provision shall result in the automatic termination of the attorney's registration under this Part;

(c) Noncompliance with the provisions of section 468-a of the Judiciary Law and the rules promulgated thereunder, insofar as pertinent, shall, 30 days following the date set forth therein for compliance, result in the termination of the attorney's rights under this Part.

§ 522.6 Subsequent admission on motion

Where a person registered under this Part subsequently seeks to obtain admission without examination under section 520.10 of the Rules of this Court, the provision of legal services under this Part shall not be deemed to be the practice of law for the purpose of meeting the requirements of section 520.10(a)(2)(i).

§ 522.7 Saving Clause and Noncompliance

(a) An attorney employed as in-house counsel, as that term is defined in section 522.1(a), shall file an application in accordance with section 522.2 within 30 days of the commencement of such employment;

(b) Failure to comply with the provisions of this Part shall be deemed professional misconduct, provided, however, that the Appellate Division may upon application of the attorney grant an extension upon good cause shown.

§ 522.8 Pro bono legal services

Notwithstanding the restrictions set forth in section 522.4 of this Part, an attorney registered as in-house counsel under this Part may provide pro bono legal services in this State in accordance with New York Rules of Professional Conduct (22 NYCRR 1200.0) rule 6.1(b) and other comparable definitions of pro bono legal services in New York under the following terms and conditions. An attorney providing pro bono legal services under this section:

(a) shall be admitted to practice and in good standing in another state or territory of the United States or in the District of Columbia and possess the good moral character and general fitness requisite for a member of the bar of this State, as evidenced by the attorney's registration pursuant to section 522.1(b) of this Part;

(b) pursuant to section 522.2(c)(2) of this Part, agrees to be subject to the disciplinary authority of this State and to comply with the laws and rules that govern attorneys admitted to the practice of law in this State, including the New York Rules of Professional Conduct (22 NYCRR Part 1200.0) and the rules governing the conduct of attorneys in the judicial department where the attorney's registration is issued;

(c) may appear, either in person or by signing pleadings, in a matter pending before a tribunal, as that term is defined in New York Rules of Professional Conduct (22 NYCRR 1200.0) rule 1.0(w), at the discretion of the tribunal, without being admitted pro hac vice in the matter. Prior to any appearance before a tribunal, a registered in-house counsel must provide notice to the tribunal that the attorney is not admitted to practice in New York but is registered as in-house counsel pursuant to this Part. Such notice shall be in a form approved by the Appellate Division; and

(d) shall not hold oneself out as an attorney admitted to practice in this State, in compliance with section 522.4(d) of this Part.

State of New York
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany, on the 10th day of December, 2015

Present, HON. JONATHAN LIPPMAN, Chief Judge Presiding.

In the Matter

of

The Amendment of the Rules of the Court of Appeals to add a new Part 523 thereof for the Temporary Practice of Law in New York.

Pursuant to section 53 of the Judiciary Law, it is hereby

ORDERED that the Rules of the Court of Appeals are amended, effective December 30, 2015, or as soon thereafter as section 52 of the Judiciary Law is complied with, by adding a new Part 523 thereof pertaining to the Temporary Practice of Law in New York. Part 523 provides as follows:

RULES OF THE COURT OF APPEALS FOR

THE TEMPORARY PRACTICE OF LAW IN NEW YORK

§ 523.1 General regulation as to lawyers admitted in another jurisdiction

A lawyer who is not admitted to practice in this State shall not:

(a) except as authorized by other rules or law, establish an office or other systematic and continuous presence in this State for the practice of law; or

(b) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this State.

§ 523.2 Scope of temporary practice

(a) A lawyer who is not admitted to practice in this State may provide legal services on a temporary basis in this State provided the following requirements are met.

(1) The lawyer is admitted or authorized to practice law in a state or territory of the United States or in the District of Columbia, or is a member of a recognized legal profession in a non-United States jurisdiction, the members of which are admitted or authorized 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; and

(2) the lawyer is in good standing in every jurisdiction where admitted or authorized to practice; and

(3) the temporary legal services provided by the lawyer could be provided in a jurisdiction where the lawyer is admitted or authorized to practice and may generally be provided by a lawyer admitted to practice in this State, and such temporary legal services:

(i) are undertaken in association with a lawyer admitted to practice in this State who actively participates in, and assumes joint responsibility for, the matter; or

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

(iii) are in or reasonably related to a pending or potential arbitration, mediation or other

alternative dispute resolution proceeding held or to be held in this or another jurisdiction, if the services are not services for which the forum requires pro hac vice admission; or (iv) are not within paragraph (3)(ii) or (3)(iii) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted or authorized to practice.

(b) A person licensed as a legal consultant pursuant to 22 NYCRR Part 521, or registered as in-house counsel pursuant to 22 NYCRR Part 522, may not practice pursuant to this Part.

§ 523.3 Disciplinary authority

A lawyer who practices law temporarily in this State pursuant to this Part shall be subject to the New York Rules of Professional Conduct and to the disciplinary authority of this State in connection with such temporary practice to the same extent as if the lawyer were admitted or authorized to practice in the State. A grievance committee may report complaints and evidence of a disciplinary violation against a lawyer practicing temporarily pursuant to this Part to the appropriate disciplinary authority of any jurisdiction in which the attorney is admitted or authorized to practice law.

§ 523.4 Annual report

On or before the first of September of each year, the Office of Court Administration shall file an annual report with the Chief Judge reviewing the implementation of this rule and making such recommendations as it deems appropriate.

McKinney's Consolidated Laws of New York Annotated
Judiciary Law (Refs & Annos)
Appendix
Rules of Professional Conduct [eff. April 1, 2009. As Amended to March 15, 2017.] (Refs & Annos)
Maintaining the Integrity of the Profession

Rules of Prof. Con., Rule 8.5 McK.Consol.Laws, Book 29 App.

Rule 8.5. Disciplinary Authority and Choice of Law

Currentness

(a) A lawyer admitted to practice in this state is subject to the disciplinary authority of this state, regardless of where the lawyer's conduct occurs. A lawyer may be subject to the disciplinary authority of both this state and another jurisdiction where the lawyer is admitted for the same conduct.

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

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

(2) For any other conduct:

(i) If the lawyer is licensed to practice only in this state, the rules to be applied shall be the rules of this state, and

(ii) If the lawyer is licensed to practice in this state 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] It is longstanding law that the conduct of a lawyer admitted to practice in this state is subject to the disciplinary authority of this state, regardless of where the conduct occurs.

Choice of Law

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct, imposing 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. Additionally, the lawyer's conduct may 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 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.

[4] Paragraph (b)(1) provides that as to a lawyer's conduct relating to a proceeding pending before a court before which the lawyer is admitted to practice either generally or for purposes of that proceeding, the lawyer shall be subject only to the rules of the jurisdiction in which the court sits unless the rules of the court, including its choice-of-law rules, provide otherwise. As to all other conduct, paragraph (b)(2) provides that a lawyer shall be subject to the rules of the admitting jurisdiction in which the lawyer principally practices or, if the predominant effect of the conduct clearly is in another jurisdiction in which the lawyer is licensed to practice, 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 court, the predominant effect of such conduct could be where the lawyer principally practices, where the conduct occurred, where the court in which the proceeding is ultimately brought sits, or in another jurisdiction.

[5] When a lawyer is licensed to practice in New York and another jurisdiction and the 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 an admitting jurisdiction other than the one in which the lawyer principally practices. For conduct governed by paragraph (b)(2), as long as the lawyer's conduct conforms to the rules of the jurisdiction in which the lawyer principally practices, the lawyer should not be subject to discipline unless the predominant effect of the lawyer's conduct will clearly occur in another admitting jurisdiction.

[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.

[7] The choice-of-law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between or among competent regulatory authorities in the affected jurisdictions provide otherwise.

NOTES OF DECISIONS

Admission in state

Lawyer employed overseas but admitted in New York is subject to the New York Lawyer's Code of Professional Responsibility. N.Y.State Bar Ass'n, Ethics Op. 01-742, 2001 WL 671462.

Multistate admission

Whether the rules of professional conduct that would be applied to a lawyer employed overseas but admitted to the bar in New York are those of New York or some other jurisdiction depends on whether the lawyer is also admitted in another

jurisdiction and, if so, the place where the lawyer principally practices or where the lawyer's conduct has its predominant effect. N.Y.State Bar Ass'n, Ethics Op. 01-742, 2001 WL 671462.

Reciprocal or sister state discipline

Defenses available under rule did not apply to bar reciprocal discipline based upon discipline previously imposed upon attorney in Florida proceeding in which attorney pleaded guilty to violations asserted, which included ignoring repeated requests from former client's new attorney and failing to turn over former client's file and failing to respond to numerous official inquiries regarding disciplinary investigations, conduct that was also misconduct under New York's professional conduct rules. In re Sirkin (1 Dept. 2010) 77 A.D.3d 320, 913 N.Y.S.2d 1. Attorney and Client 59.18

Defenses available under rule did not apply to bar reciprocal discipline based upon discipline previously imposed upon attorney in New Jersey proceeding, due to his failure to keep client in personal injury action apprised of events and communications, to communicate with client for almost one year, to apprise client as to location of settlement proceeds, to notify client of pending motion, and to forward closing papers, where attorney was served with copy of New Jersey complaint and sent letter seeking response to complaint, attorney defaulted by failing to appear, thereby admitting all allegations in complaint, and misconduct for which discipline was imposed, including failure to cooperate with disciplinary investigation, constituted misconduct in New York. In re Sirkin (1 Dept. 2010) 77 A.D.3d 320, 913 N.Y.S.2d 1. Attorney and Client 59.18

For purposes of reciprocal attorney disciplinary proceeding, attorney's violation of California Professional Conduct Rule prohibiting failing to promptly deliver client funds in an attorney's possession was analogous to New York rule requiring that a lawyer deliver the property of a client or third party promptly after a demand was made. In re Jarblum (1 Dept. 2008) 51 A.D.3d 68, 852 N.Y.S.2d 98. Attorney And Client 59.18

For purposes of reciprocal attorney disciplinary proceeding, attorney's violation of California Professional Conduct Rule prohibiting failing to maintain client funds in a trust account was analogous to New York rule requiring that client funds be maintained in a special trust account. In re Jarblum (1 Dept. 2008) 51 A.D.3d 68, 852 N.Y.S.2d 98. Attorney And Client 59.18

Evidence was sufficient to support imposition, in attorney disciplinary proceeding, of reciprocal discipline on attorney previously disbarred in New Jersey; attorney received sufficient notice of the New Jersey charges and an opportunity to answer them, his admission that he could not successfully defend the charges established that no infirmity of proof existed, and his admitted misconduct of the knowing misappropriation of funds clearly constituted professional misconduct in New York. In re Gentile (1 Dept. 2007) 46 A.D.3d 53, 844 N.Y.S.2d 197. Attorney And Client 59.18

There was clear evidence that attorney committed the pattern of neglect of client matters for which she was disbarred from practice of law in the United States District Court for the Southern District of New York, warranting imposition of reciprocal discipline; attorney was provided with sufficient notice and an opportunity to be heard in the federal disciplinary proceeding, the findings of misconduct were fully supported by the record, and the federal court, applying New York law, determined that attorney's conduct violated the New York Lawyer's Code of Professional Responsibility. In re Hatton (1 Dept. 2007) 44 A.D.3d 49, 842 N.Y.S.2d 355. Attorney And Client 59.18

Under the totality of circumstances, including the remoteness in time of attorney's misconduct, public censure was appropriate reciprocal discipline to be imposed on attorney previously suspended from the practice of law in Connecticut for one year; attorney had previously received a Letter of Caution, and the evidence reflected that he had failed to appreciate the seriousness of the charges against him, which included lack of diligence in a client matter and conduct

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prejudicial to the administration of justice. In re Wood (2 Dept. 2007) 42 A.D.3d 77, 836 N.Y.S.2d 623. Attorney And Client 59.18

Attorney's false statements to a federal court that illness had precluded her from attending required appearance before that court on two occasions constituted violations of professional rules prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, engaging in conduct prejudicial to the administration of justice, and engaging in conduct that adversely reflected on the lawyer's fitness to practice law, for purpose of state reciprocal discipline proceeding. In re Jaffe (1 Dept. 2007) 40 A.D.3d 96, 832 N.Y.S.2d 177. Attorney And Client 59.18

Attorney's out-of-state conduct in failing to communicate with clients in mortgage refinancing, paying mortgage broker a fee to attend closing on his behalf, taking $1,495 from loan proceeds as his fee, and failing to record mortgage until some five months after closing would have violated forum state's professional rules prohibiting a lawyer from neglecting a legal matter entrusted to that lawyer, prohibiting a lawyer from charging or collecting excessive fees, and prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, and misrepresentation, thus warranting reciprocal discipline. In re Roberson (1 Dept. 2007) 40 A.D.3d 69, 832 N.Y.S.2d 175. Attorney And Client 59.18

Attorney who had been disbarred in Arizona was precluded from raising any of the enumerated defenses to imposition of reciprocal discipline; attorney was not deprived of due process since he had an opportunity to be heard, but defaulted, in the Arizona proceeding, there was substantial evidence to support the charges against him, and the misconduct for which he was disbarred constituted violations of the New York Rules of Professional Conduct prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation, client neglect, and conduct prejudicial to the administration of justice, as well as violations of the rules regarding proper accounting practices. In re Hovell (1 Dept. 2007) 39 A.D.3d 107, 831 N.Y.S.2d 116. Attorney And Client 60; Constitutional Law 4273(3)

Misconduct for which attorney was disciplined in New Jersey disciplinary proceeding constituted misconduct in New York, as required for imposition of reciprocal discipline; New Jersey rules providing that it was professional misconduct for an attorney to knowingly make a false statement to a third party, engage in dishonest conduct, or commit a criminal act that reflected on a lawyer's honesty, trustworthiness or fitness as a lawyer, were analogous to language of New York rules prohibiting attorneys from knowingly making false statements, engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, or engaging in illegal conduct that adversely reflected on the lawyer's honesty, trustworthiness or fitness as a lawyer. In re Harris (1 Dept. 2006) 37 A.D.3d 90, 826 N.Y.S.2d 222. Attorney And Client 39

Attorney's admitted actions of making false representation to federal district court, and his knowing pursuit of frivolous litigation theory, clearly constituted intentional misconduct, for purpose of petition by state for reciprocal discipline against attorney based on attorney's suspension in federal disciplinary action, although attorney stipulated only to conduct that was "prejudicial to the administration of justice." In re Pu (1 Dept. 2006) 37 A.D.3d 56, 826 N.Y.S.2d 43, leave to appeal dismissed in part, denied in part 8 N.Y.3d 877, 832 N.Y.S.2d 487, 864 N.E.2d 617. Attorney And Client 59.18

Conduct for which attorney was disciplined in New Jersey disciplinary proceeding constituted misconduct in New York, as required for imposition of reciprocal discipline in New York disciplinary proceeding, where New Jersey disciplinary rule which provided that it was professional misconduct for an attorney to commit an act that reflected adversely on his honesty, trustworthiness, or fitness as a lawyer was essentially identical to language of New York disciplinary rule stating that a lawyer "shall not engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer." In re Sims (1 Dept. 2006) 36 A.D.3d 304, 825 N.Y.S.2d 475. Attorney And Client 59.18

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Disbarment of attorney in North Carolina, for misappropriating client funds and presenting false documentation and altered bank records, warranted reciprocal discipline in New York of disbarment; attorney's **conduct** would have constituted misconduct in New York. In re Simons (1 Dept. 2006) 34 A.D.3d 136, 822 N.Y.S.2d 254. Attorney And Client 🔑 59.18

Six-month suspension of attorney in Connecticut, for **conduct** prejudicial to administration of justice, failure to act competently, and undignified or discourteous **conduct** degrading to tribunal, warranted reciprocal discipline of six-month suspension. In re Williams (1 Dept. 2006) 33 A.D.3d 38, 819 N.Y.S.2d 508, leave to appeal dismissed in part, denied in part 8 N.Y.3d 858, 831 N.Y.S.2d 105, 863 N.E.2d 109, appeal dismissed 8 N.Y.3d 1007, 839 N.Y.S.2d 448, 870 N.E.2d 687, reargument denied 9 N.Y.3d 919, 844 N.Y.S.2d 173, 875 N.E.2d 892, certiorari denied 128 S.Ct. 2091, 553 U.S. 1018, 170 L.Ed.2d 817. Attorney And Client 🔑 59.13(3)

Attorney's improper recordkeeping, commingling of funds, and negligent misappropriation in New Jersey amounted to serious misconduct under New York law, for purposes of determining whether reciprocal discipline was warranted, although New Jersey's escrow bookkeeping **rules** were not identical to New York's, where New York **rules** required accurate records of escrow accounts. In re Dranov (1 Dept. 2006) 26 A.D.3d 26, 806 N.Y.S.2d 561. Attorney And Client 🔑 44(2)

Attorney's **conduct** of filing false statements with New Jersey rent control office in order to collect a higher rent on an apartment he owned, which resulted of imposition, by the Supreme Court of New Jersey, of a reprimand, constituted **conduct** involving dishonesty, fraud, deceit or misrepresentation, warranting the imposition of reciprocal discipline. In re Becker (1 Dept. 2005) 22 A.D.3d 29, 801 N.Y.S.2d 5. Attorney And Client 🔑 45

Attorney was precluded, in reciprocal disciplinary proceeding based upon his disbarment in Washington State, from raising defense that the misconduct for which he was disciplined did not constitute misconduct in New York State; attorney's violations of Washington **Rules** of **Professional** **Conduct** were comparable to New York State disciplinary **rules** governing neglect of legal matters, conflicts of interest, maintenance of escrow funds and records, withdrawal from representation, making false statements, and failing to cooperate with an investigation. In re Anschell (1 Dept. 2004) 11 A.D.3d 56, 781 N.Y.S.2d 310. Attorney And Client 🔑 59.18

Washington state discipline of attorney for "knowingly" making "false statement of material fact or law to a third party" and engaging in dishonest **conduct** was proper subject for reciprocal discipline in New York where such **conduct** would have constituted "**conduct** involving dishonesty, fraud, deceit or misrepresentation" or "knowingly making a false statement of law or fact." In re Anschell (1 Dept. 2004) 11 A.D.3d 56, 781 N.Y.S.2d 310. Attorney And Client 🔑 38

Washington state discipline of attorney for failing to preserve identity of escrow funds by his untimely deposit of funds, and by failing to disburse funds in transaction per escrow instructions was proper subject for reciprocal discipline in New York where such **conduct** would have violated requirement that attorneys deposit escrow funds into specially designated trust accounts. In re Anschell (1 Dept. 2004) 11 A.D.3d 56, 781 N.Y.S.2d 310. Attorney And Client 🔑 44(2)

Washington state discipline of attorney for failing to take proper steps to protect client's rights when he effectively withdrew from representation was proper subject for reciprocal discipline in New York where such **conduct** would have violated substantially similar **rule**. In re Anschell (1 Dept. 2004) 11 A.D.3d 56, 781 N.Y.S.2d 310. Attorney And Client 🔑 44(1)

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Washington state discipline of attorney for failing to act with reasonable diligence and promptness in representing client was proper subject for reciprocal discipline in New York where such **conduct** would have constituted neglect of legal matter. In re Anschell (1 Dept. 2004) 11 A.D.3d 56, 781 N.Y.S.2d 310. Attorney And Client 44(1)

Washington state discipline of attorney for failing to communicate with his clients as to status of their cases was proper subject for reciprocal discipline in New York where such **conduct** would have constituted neglect of legal matter. In re Anschell (1 Dept. 2004) 11 A.D.3d 56, 781 N.Y.S.2d 310. Attorney And Client 44(1)

Washington state discipline of attorney for “knowingly” making “false statement of material fact or law to a third party” and engaging in dishonest **conduct** was proper subject for reciprocal discipline in New York where such **conduct** would have constituted “**conduct** involving dishonesty, fraud, deceit or misrepresentation” or “knowingly mak[ing] a false statement of law or fact.” In re Anschell (1 Dept. 2004) 11 A.D.3d 56, 781 N.Y.S.2d 310. Attorney And Client 38

Washington state discipline of attorney for failing to maintain proper escrow records was proper subject for reciprocal discipline in New York which had similar **rule** requiring bookkeeping records. In re Anschell (1 Dept. 2004) 11 A.D.3d 56, 781 N.Y.S.2d 310. Attorney And Client 44(2)

Public reprimand imposed upon attorney in New Jersey, based upon his admitted violation of **rule** and opinion governing attorney advertising, warranted reciprocal discipline of public censure in New York; attorney's advertisement contained potentially misleading statements to future clients and constituted misconduct in New York. In re Power (1 Dept. 2003) 3 A.D.3d 21, 768 N.Y.S.2d 455. Attorney And Client 59.18

Attorney's failure to deliver funds promptly to a third person and to respect the rights of that third person, in violation of another jurisdiction's disciplinary **rules**, amounted to violations of state **professional** responsibility **rules** prohibiting failure to promptly return funds of a third party, wrongfully placing lien on third-party funds, and taking action on behalf of client merely to harass or injure another. In re Gilbert (1 Dept. 2000) 268 A.D.2d 67, 707 N.Y.S.2d 394. Attorney And Client 32(12)

Attorney's negligent misappropriation of $10,303.23 in client funds, failure to comply with record keeping **rules**, failure to properly supervise employees with respect to maintenance of firm's business and trust accounts, all as found by disciplinary authorities in another jurisdiction, amounted to violations of state **professional** responsibility **rules** prohibiting commingling of trust account funds with personal funds, failure to record certain disbursements from trust account, negligent misappropriation of client trust funds, and failure to adequately supervise record-keeping duties of lay employees. In re Gilbert (1 Dept. 2000) 268 A.D.2d 67, 707 N.Y.S.2d 394. Attorney And Client 32(7)

Attorney's failure to disclose material facts to bankruptcy court, as established on sufficient evidence in disciplinary proceeding in another state, amounted to violation of equivalent **professional** responsibility **rule** in state court. In re Gifis (1 Dept. 1999) 259 A.D.2d 105, 693 N.Y.S.2d 38. Attorney And Client 42

Attorney's misconduct with respect to record-keeping, as established in disciplinary proceeding in another state, did not amount to violation of equivalent **professional** responsibility **rules** in state court, as state's **rules** in such regard substantially differed from those in state which initially imposed discipline. In re Gifis (1 Dept. 1999) 259 A.D.2d 105, 693 N.Y.S.2d 38. Attorney And Client 37.1

Attorney's knowing misappropriation of client funds, as established on sufficient evidence in disciplinary proceeding in another state, amounted to violation of equivalent **professional** responsibility **rules** in state court. In re Gifis (1 Dept. 1999) 259 A.D.2d 105, 693 N.Y.S.2d 38. Attorney And Client 44(2)

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Findings in course of disciplinary proceeding against attorney in another state that attorney charged and collected excessive fees, mishandled client funds and property, failed to comply with client's reasonable request for information, failed to take steps to protect client's interests upon termination of representation, and failed to respond to lawful demands for information made by bar of such other state, were equivalent of findings that he violated analogous state **rules**, to which attorney had no statutory defense. In re Blumrosen (1 Dept. 1999) 253 A.D.2d 239, 687 N.Y.S.2d 357. Attorney And Client 42; Attorney And Client 44(1); Attorney And Client 44(2)

Reciprocal six-month suspension from practice of law was warranted, following six-month suspension by New Jersey Supreme Court for false and misleading statement; attorney was provided notice and opportunity to be heard in New Jersey disciplinary proceeding but elected not to contest allegations, and specified New Jersey disciplinary charges would constitute violation of New York disciplinary **rules** prohibiting attorney from engaging in **conduct** involving dishonesty, fraud, deceit, or misrepresentation, and prohibiting **conduct** that adversely reflects on attorney's fitness to practice law. Matter of Brennan (1 Dept. 1998) 250 A.D.2d 6, 678 N.Y.S.2d 632. Attorney And Client 59.18

Finding by attorney disciplinary authority of another jurisdiction that attorney had mishandled funds belonging to estate, failed to maintain proper balance in his attorney trust account, and failed to appear or provide specific documents at continuations of demand audits, properly supported by evidence, was equivalent of finding that attorney violated analogous New York State disciplinary **rules** prohibiting knowing misappropriation of client money. Matter of Pohlmeyer (1 Dept. 1998) 243 A.D.2d 223, 674 N.Y.S.2d 365. Attorney And Client 54

Rules of Prof. Con., **Rule** **8**.**5** McK. Consol. Laws, Book 29 App., NY ST RPC **Rule** **8**.**5**
Current with amendments through Sept 15, 2017.

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