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The Unauthorized Practice of Law - Jeopardy Style

I. Multijurisdictional Practice of Law

Multijurisdictional practice describes the legal work of a lawyer in a jurisdiction in which the lawyer is not admitted to practice law. Lawyers in the United States are not licensed to practice law on a national basis but are licensed by a state judiciary to practice law within the particular state. In general, a lawyer may not represent a client before a state tribunal or otherwise practice law within a particular state unless the lawyer is licensed by the state or is otherwise authorized to do so. All states have Unauthorized Practice of Law Statutes that criminalize the practice of law by an individual who is not licensed to practice. States also have ethical rules which govern the professional conduct of attorneys, including the unauthorized practice of law and the multijurisdictional practice of law.

II. Model Rules of Professional Conduct, Rule 5.5 – Unauthorized Practice of Law

In 2000, the American Bar Association created the Commission on Multijurisdictional Practice to research, study and report on the application of current ethics and bar admission rules to the multijurisdictional practice of law. On August 12, 2002 the House of Delegates adopted amendments to Rules 5.5 and 8.5 as a result of the Commission's work and recommendations.¹ Rule 5.5 of the Model Rules of Professional Conduct governs the unauthorized practice of law. Model Rules of Prof'l Conduct R. 5.5(a) (2002) [hereinafter MRPC]. Model Rule 5.5 essentially prohibits the systematic practice of law in a jurisdiction in which an attorney is not licensed yet allows the temporary practice of law in such states under certain situations.

The prohibitions are contained in Model Rules 5.5(a) and (b). Model Rule 5.5(a) provides that 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.” MRPC 5(a). Model Rule 5.5(b) prohibits a lawyer from establishing an office or maintaining a systematic and continuous presence in that jurisdiction, except as authorized by the Model Rule or other law and further prohibits a lawyer from representing that the

¹ See https://www.americanbar.org/groups/professional_responsibility/committees-commissions/commission-on-multijurisdictionalpractice for full comparison report.

lawyer is admitted in a jurisdiction if the lawyer is not so admitted. MRPC 5.5(b). Presence may be systematic and continuous even if the lawyer is not physically present in the jurisdiction. MRPC 5.5, Comment [4]. There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in a given jurisdiction. MRPC 5.5, Comment [6]. Services may be "temporary" even though the lawyer provides services in the jurisdiction on a recurring basis, or for an extended period of time. MRPC 5.5, Comment [6].

Despite the general prohibitions, Model Rule 5.5(c) and (d) allow for the provision of legal services in a jurisdiction in which the lawyer is not admitted under the following circumstances:

1. Temporary work associating with a lawyer who is admitted in said jurisdiction;
2. Temporary presence through *pro hac vice* procedures;
3. Temporary presence related to pending or potential arbitration, mediation or other alternative resolution proceedings;
4. Temporary work providing for transactional representation, counseling and other non-litigation work that arises out of or is reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice
5. A lawyer employed by an organizational entity (e.g. an in-house counsel corporate lawyer or a government lawyer); or
6. When authorized to do so by federal law or other law.

Most states have adopted Model Rule 5.5 entirely or in some form. The following is the complete version of Model Rule 5.5:

Model Rules of Professional Conduct. 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].

III. Model Rules of Professional Conduct, Rule 8.5 – Disciplinary Authority; Choice of Law.

Model Rule 8.5 provides a dual enforcement procedure for multijurisdictional practicing attorneys allowing for disciplinary action in both the state in which the attorney is licensed and the state in which

the attorney is not licensed yet provides legal services. This Rule also identifies the application of the choice of law procedures.

Most states have adopted Model Rule 8.5 entirely or in some form. The following is the complete version of Model Rule 8.5:

Model Rules of Professional Conduct. 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.

IV. Adoption of Model Rules 5.5 and 8.5 throughout the United States

The following identifies what states have adopted Model Rules 5.5 and 8.5 or similar rules.

Model Rules of Professional Conduct Rule 5.5. (Adopted)

- Alaska
- Arkansas
- Illinois
- Indiana
- Iowa
- Maryland
- Massachusetts

- Nebraska
- New Hampshire
- Rhode Island
- Vermont
- Washington
- West Virginia

Model Rules of Conduct Rule 5.5. (Adopted Similar Rule)

- Alabama
- Arizona
- California
- Colorado
- Connecticut
- Delaware
- District of Columbia
- Florida
- Georgia
- Idaho
- Kansas
- Kentucky
- Louisiana
- Maine
- Michigan
- Minnesota
- Missouri

- Nevada
- New Jersey
- New Mexico
- New York
- North Carolina
- North Dakota
- Ohio
- Oklahoma
- Oregon
- Pennsylvania
- South Carolina
- South Dakota
- Tennessee
- Utah
- Virginia
- Wisconsin
- Wyoming

Model Rules of Professional Conduct Rule 5.5. (States without a Similar Rule)

- Hawaii
- Mississippi
- Montana
- Texas

Model Rules of Professional Conduct Rule 8.5. (Adopted)

- Louisiana
- Maine
- Minnesota
- Nebraska
- New Jersey
- Ohio

- **Arkansas**
- **Connecticut**
- **Delaware**
- **Idaho**
- **Illinois**
- **Iowa**
- **Kentucky**

- **Oregon**
- **Rhode Island**
- **South Dakota**
- **Utah**
- **Washington**

Model Rules of Professional Conduct Rule 8.5. (Adopted Similar Rule)

- **Alaska**
- **Arizona**
- **Colorado**
- **District of Columbia**
- **Georgia**
- **Indiana**

- **Massachusetts**
- **Michigan**
- **Missouri**
- **New Hampshire**
- **New York**
- **North**

- **Pennsylvania**
- **South Carolina**
- **Tennessee**
- **Vermont**
- **Virginia**
- **Wisconsin**

Model Rules of Professional Conduct Rule 8.5. (States without a Similar Rule)

- **Alabama**
- **California**
- **Florida**
- **Hawaii**
- **Kansas**
- **Maryland**

- **Mississippi**
- **Montana**
- **Nevada**
- **New Mexico**
- **North Dakota**
- **Texas**