

ROBINSON BRADSHAW & HINSON

**Multijurisdictional Practice of Law
for In-House Counsel**

Presentation for Association of Corporate Counsel

Speakers: Peter C. Buck and Robert E. Harrington

March 2010

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Peter C. Buck

Practice Areas

Banking and Capital Markets
Corporate and Commercial
Life Sciences
Mergers and Acquisitions
Private Equity Financings and Buyouts
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Energy
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Mr. Buck practices in the areas of mergers and acquisitions, corporate law, banking and finance, and energy law. He joined Robinson, Bradshaw & Hinson in 1976. From 1996-98, he served as deputy general counsel of Duke Energy Corporation. He rejoined the firm in 1998.

Mr. Buck is a frequent speaker at state and national continuing legal education seminars. Recently, he co-authored "Confidentiality of Communications by In-House Counsel for Financial Institutions" for the North Carolina Banking Institute.

Education

Duke University, J.D., 1976
Order of the Coif; Editor-in-Chief, *Duke Law Journal*, 1975-76
Duke University, A.B., 1969

Professional Activities

North Carolina Bar Association, Business Law Section, Corporations Committee, Chairman

Publications and Awards

North Carolina Super Lawyers, Top 100 North Carolina Super Lawyer, business/corporate, 2008-10
Woodward/White, Inc., *The Best Lawyers in America*, corporate governance and compliance, international trade and finance law, leveraged buyouts and private equity, mergers and acquisitions, securities, 2009-10; banking, corporate, 2010, Charlotte Mergers & Acquisitions Lawyer of the Year, 2010
Business North Carolina, Legal Elite Hall of Fame, business law and corporate counsel
Chambers USA: America's Leading Business Lawyers, banking & finance and corporate/M&A, 2003-09
The International Who's Who of Corporate Governance Lawyers, 2007
Co-Author, "Recent Cases Examine Boards' and Officers' Duties to Financially Troubled Companies," January 2009

Bar Admissions

North Carolina





Robert E. Harrington

Practice Areas

Litigation
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Mr. Harrington's experience includes a broad range of commercial litigation. He has represented clients in federal, state, and bankruptcy courts in North Carolina, South Carolina, Louisiana, Mississippi, Georgia, and Virginia. He is an active member of the bars of North Carolina, Louisiana, and the District of Columbia. He has devoted the majority of his litigation work in the past several years to the following substantive areas: (i) general contract and trade practice litigation, (ii) representation of financial institutions in their capacity as fiduciaries, (iii) representation of consumer lenders, and (iv) employment litigation.

Mr. Harrington's recent experience includes:

Contract and Trade Practice Litigation

- Obtaining the dismissal of a lawsuit against the U.S. subsidiary of a French holding company alleging breach of contract and related claims arising from the manufacture and installation of piping on an offshore platform; the lawsuit was pending in Louisiana state court
- Obtaining favorable settlement for a North Carolina hospital corporation suing as plaintiff in a lawsuit arising from a medical software contract; the lawsuit was pending in the United States District Court for the Western District of North Carolina
- Representing a national glass repair company in constitutional challenge to Louisiana statutes regulating interstate provision of repair services; the United States District Court for the Eastern District of Louisiana granted a declaration that statutes were "per se invalid"
- Representing a national on-line service in defense of putative class action claims based on alleged breach of consumer information; the Panel on Multidistrict Litigation consolidated all claims for pretrial proceedings in the United States District Court for the Western District of North Carolina, which granted defendants' motion to compel individual arbitrations and denied plaintiffs' motion for § 1292 certification
- Representing a national lender in action arising from alleged breach of customer information; North Carolina court dismissed all claims with prejudice on Rule 12(b)(6) motion

Representation of Fiduciaries

- Defending actions seeking to recover against trustees and investment managers for alleged mismanagement of assets
- Defending actions to terminate trusts and actions to modify trusts
- Defending an action to remove an executor and an action to determine ownership of assets obtained by an estate

Representation of Consumer Lenders

- Representing a major national subprime lender in Tomlin v. Dylan Mortgage Co., a North Carolina class action, in which borrowers claimed a variety of violations of state and federal lending laws
- Defending consumer, mortgage, and home equity lenders in several dozen individual actions in state, federal, and bankruptcy courts; these lawsuits have involved claims under state usury laws, state unfair trade practices and debt collection laws, the Truth in Lending Act, the Fair Debt Collection Practices Act, the Real Estate Settlement Procedures Act, the Fair Credit Reporting Act, and various other state and federal laws

Employment Litigation

- Representing employers and employees in employment disputes, including defending claims of race, gender, and religious discrimination and litigating employment covenant claims



Education

Duke University, J.D., with high honors, 1987
Notes Editor, *Alaska Law Review*

Duke University, B.A., magna cum laude, 1984
Angier B. Duke Memorial Scholar

Professional Activities

Mecklenburg County Bar, Board of Directors, 2008-present; Special Committee on Diversity, Co-chair, 2004-05

National Lawyers' Committee for Civil Rights Under Law, Board of Directors, Co-chair, 2005-2007

Duke Law School Board of Visitors, Member, 2006-present

American Law Institute, Member, 1995-present

Restatement of Law (Third) Agency, Advisor, 1997-2002

Eastern District of Louisiana, Federal Criminal Justice Act Panel, 1997-1999

John S. Leary, Sr. Bar Association, Member

Law Clerk, The Honorable Martin L.C. Feldman, United States District Court, Eastern District of Louisiana, 1987-88

Civic and Community Activities

Levine Museum of the New South, Board of Directors, Chair, 2008-present

The Greater Charlotte Cultural Trust, Board of Directors, 2008-present

Leadership Charlotte, Class of 2000-01

Publications and Awards

North Carolina Super Lawyers, business litigation, 2006-2010

Woodward/White, Inc., *The Best Lawyers in America*, commercial litigation, 2010

Charlotte Business Journal, Diversity in Business Catalyst, 2004

National Association for the Advancement of Colored People, Pro Bono Legal Services Award, 1997

Presented "Direct Examination: Getting Your Story Across," *All-Star Trial Advocacy 2009*, Mecklenburg County Bar Continuing Legal Education Series

Presented "Developing a Data Security Program" with Robert M. Bryan, Association of Corporate Counsel - Charlotte Chapter, June 2009

Bar Admissions

North Carolina

District of Columbia

Louisiana





Nichelle N. Levy

Practice Areas

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Ms. Levy's practice includes corporate and commercial law, intellectual property (with a focus on trademark and copyright related matters), and sports and entertainment. She was previously Director of Business Affairs for Time Warner Global Marketing, Inc. and associated with Loeb & Loeb LLP, in its New York Entertainment Department. Prior to attending law school, Ms. Levy gained experience in advertising and brand management with Leo Burnett, Philip Morris and EMI Music. Additionally, while in law school, Ms. Levy was a legal intern with the National Hockey League, where she was involved in trademark enforcement.

Ms. Levy's recent experience includes:

- Representing a financial services company in drafting and negotiating various advertising, event, production, sponsorship and promotional rights agreements with
 - Advertising and event marketing agencies
 - Major League Baseball teams
 - National Football League and teams, including Super Bowl 2009 and Season Kickoff 2008
 - National Basketball Association teams, including a Women's National Basketball Association team
 - A Major League Soccer team
 - National Broadcasting Company (NBC)
 - The United States Olympic Committee (USOC) for the Beijing 2008 Olympic Games including various value in-kind agreements with other USOC sponsors and hospitality providers
 - Location and hospitality providers for Professional Golf Association events
 - Various regional events, including the Orange Bowl and the Chicago Marathon
 - Non-profit organizations including the American Red Cross and the Muscular Dystrophy Association
 - United States military related sponsorships including the reopening of Intrepid Museum in New York City
- Representing a NASCAR driver in negotiations with a cable network and sponsors with regard to a reality show to be distributed on cable and the Internet
- Representing various software companies with regard to compliance with applicable open source software licenses
- Representing various clients in copyright registration matters with the United States Copyright Office
- Representing various clients in trademark registration matters with the United States Patent and Trademark Office
- Representing various clients in film and television production matters
- Representing various clients in book publishing/licensing matters
- Representing a defense contractor in the acquisition of one of its suppliers
- Representing a healthcare company in the formation of joint ventures with physicians
- Representing tobacco processing companies in matters before the Alcohol and Tobacco Tax and Trade Bureau, including compliance with recently implemented regulations under the Children's Health Insurance Program Reauthorization Act of 2009



Education

New York University, J.D., 2001
Edmond Cahn Law Review award, for outstanding third year editor; Walter J. Derenberg Prize, for the student who achieves the highest academic grade in the area of copyright law
Articles Editor, *NYU Law Review*, 2000-01

University of Chicago, M.A., 1990

University of Chicago, B.A., 1990
National Achievement Scholar

Professional Activities

International Trademark Association

North Carolina Bar Association, Sports & Entertainment Section, Bylaws Committee Chairperson

National Bar Association, Intellectual Property Section

American Bar Association, Intellectual Property Section

Corporate Counsel Women of Color, Former Member

Civic and Community Activities

YMCA of Charlotte, James J. Harris Branch, Board of Managers, 2010-present

Artsteach, Board of Directors, 2008-2009

South Charlotte Provisional Group of Jack & Jill of America, Inc., Executive Committee, Bylaws Committee Chairperson, 2009-2010

Thurgood Marshall College Fund Awards of Excellence, Committee Member, 2009

Publications and Awards

“*Open Source Software License Enforcement Actions on the Rise*,” October 2009

“*Facebook Offers Brief Window to Protect Trademark*,” June 2009

Co-author, “*Time Warner Loses Superman Copyright to Creator’s Family*,” June 2008

“*Method to Their Madness: The Secure Digital Music Initiative, a Law and Economics Perspective*,” *5 Va.J.L. & Tech. 12* (Fall 2000)

Bar Admissions

North Carolina

New Jersey

New York



ROBINSON BRADSHAW & HINSON

Multijurisdictional Practice of Law for In-House Counsel

Association of Corporate Counsel - Charlotte

Peter C. Buck, Robert E. Harrington
and Nichelle N. Levy¹
March 3, 2010

I. Introduction: Why This Topic is Important

- A. *Reputational Risk*: There is a reputational risk of being exposed as a lawyer who doesn't know the law. There's the possibility of finding yourself mentioned in an article like the one we've handed out.²
- B. *Penalties*: Failure to understand the rules and laws will likely lead to failure to comply. If a lawyer is not in compliance with a particular state's requirements, that lawyer could be involved in the unauthorized practice of law. If prosecuted, the lawyer could be subject to fines, suspension of license and subject to disciplinary action—potentially in two states, the state the lawyer was practicing law without authorization, and the state in which the lawyer is licensed.
- C. *Preserve Attorney-Client Privilege*: One of the lawyers in the article mentions that he thought he didn't need to be licensed because he thought he was basically acting as an executive rather than a lawyer. The problem with this scenario is that if you're not a lawyer, there is no attorney-client privilege and the advice you give and the information your client told you will not be protected by the privilege.

II. Brief History of the MJP Debate

- A. Clients' needs and attorneys' practices expanding across state lines.
- B. California Supreme Court's 1998 *Birbrower* decision. In *Birbrower*, New York licensed lawyers were sued by their client for legal malpractice and related claims; the New York firm counterclaimed for attorney's fees for work it had performed in both California and New York. The *Birbrower* court found that the New York lawyers had practiced law (without a license) "in" California and were not permitted to collect fees for services constituting the practice of law in California by virtue of the following facts: the New York law firm, which had represented the client on matters of New York law for a number of years, consulted with the client in New York with respect to a contract governed by the laws of California; the New York lawyers traveled to California (where the other party maintained its principal place of

¹ Emily Boness, a third-year law student at the University of Georgia School of Law and 2009 summer associate with Robinson, Bradshaw & Hinson, assisted with research for this outline.

² Amon, Eliza, GCS Forgot One Detail: Their License, National Law Journal, April 9, 2007, Vol. 29, No. 31

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business) on more than one occasion to meet with the other party and to negotiate resolution of the dispute; and the New York attorneys commenced arbitration with a California office of the American Arbitration Association.

- C. In response to the *Birbrower* decision, the ABA established the Committee on Multijurisdictional Practice in 2000. The committee issued recommendations for amendments to the Model Rules in 2002, and its recommendations were adopted by the ABA that same year.
 - 1. Rule 5.5 amended to relax the previously existing constraints on cross-border practices.
 - 2. Rule 8.5 amended to subject lawyers providing legal services in a state to the disciplinary authority of that state.

III. How Unauthorized Practice of Law Issues Arise

A. *Out-of-state Attorneys.*

- 1. **Opposing Counsel.** Disciplinary proceedings may be initiated in order to disqualify out-of-state counsel.
- 2. **Clients.** Disciplinary proceedings may arise in the context of malpractice or fee related disputes as in *Birbrower*.
- 3. **State Bar Disciplinary Action.** Generally respond to licensed attorney complaints, rather than initiating actions sua sponte.
- 4. **Licensing Proceedings.** When an attorney applies for admission, the state may review the attorney's practice in other states. If an attorney has not been licensed or registered as required in another state, such noncompliance could affect the attorney's licensure in his current state.

- B. *In-house Counsel.* Regulators are more concerned about non-attorneys engaging in the practice of law and tend to view in-house counsel unauthorized practice as a lower priority.

IV. Overview of the Law

- A. *General Rule:* Almost all states have rules providing that unless otherwise authorized by rule, a lawyer not admitted to practice law in the jurisdiction cannot establish an office or other "systematic and continuous presence in this jurisdiction for the practice of law." This provision is found at M.R. 5.5(b) of the Model Rules³.
- B. *Exception:* The relevant exception to this rule, found at M.R. 5.5(d)(1), allows lawyers who are admitted in another jurisdiction to provide legal services to the

³ In addition to state rules of professional conduct, states may also address the unauthorized practice of law in statutes.
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lawyer's employer or organization affiliates: "A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that: (1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission." This exception focuses on in-house counsel. In states that have this exception, the relevant questions are: (a) What is the scope of the exception? and (b) What, if anything, must the lawyer do to qualify for the exception?

1. 14 states have adopted the Model Rule exactly. (AK, AR, IL, IN, IA, MD, MA, NE, NH, OR, RI, UT, VT, WA)⁴
2. 28 states and the District of Columbia have adopted a rule similar to the model rule.
3. 8 States do not have a version of the amended model rule 5.5 (HI, KS, MI, MS, MT, NY, TX, WV)
 - (a) KS and MI allow in-house counsel to practice upon registration.
 - (b) Texas Board of Bar Examiners Policy on Statement of Lawful Practice provides that in-house counsel are not required to be licensed in Texas as long as they meet the criteria provided (e.g., licensed and in good standing in another state and in-house counsel). See http://www.ble.state.tx.us/atty_us/lawpolicy.htm.
 - (c) HI, MS, MT, NY, and WV have not enacted a version of the amended model rule or an in-house counsel registration rule.
 - i. Though unauthorized practice is addressed by statute and case law in New York (see New York Code Section 478 Practicing or Appearing as Attorney-at-law Without Being Admitted and Registered), which generally applies to unauthorized practice of law by those with a permanent presence in New York.

V. Policy

- A. *Interest of Employer*: Allowing in-house lawyers to practice law for a lawyer's employer serves the interests of the employer. The employer is not restricted in who it can hire and can transfer a lawyer around the country without worrying about the lawyer being licensed in each new state in which he lives.
- B. *Limited Risk*: Theoretically, there should be limited risk to the client, in this case the employer, because the employer is in the best position to assess the lawyer's qualifications and quality of work. Rather than the state bar or licensing

⁴ "State Implementation of ABA MJP Policies", January 26, 2010 American Bar Association, last viewed on February 23, 2010 at <http://www.abanet.org/cpr/mjp/home.html>.

requirements acting as a screening process, the employer will provide the screening and supervision of its own employees.

VI. Goals of the Presentation

- A. *Framework:* Presentation is designed to give a framework for the process an in-house counsel lawyer should follow in finding out the law in a particular state.
- B. *Resources:* We've also provided some resources to aid in determining other states' MJP laws.

VII. The Process: What Questions Do You Need to Ask?

A. Preliminary questions:

1. Are you licensed and in good standing in at least one jurisdiction?
2. Are you in good standing in all the jurisdictions in which you are licensed?

B. MJP regulatory questions:

1. Does your state have an in-house counsel exception to the unauthorized practice of law prohibition?
2. Do you qualify as in-house counsel under such an exception?
 - (a) Do you represent only your employer or affiliates or subsidiaries of your employer.
 - (b) Does your organization qualify as an appropriate "employer"?
3. If there is an in-house counsel exception, is the scope of practice for in-house counsel limited?
4. If the scope of practice is limited and does not allow the lawyer to make appearances in court, can in-house counsel apply for pro-hac vice admission?
5. When is a lawyer doing something that requires pro hac vice admission?
6. Does your state have a registration requirement for in-house counsel?

VIII. Does your state have an exception for in-house counsel?

- A. 42 states and the District of Columbia have adopted some version of amended Model Rule 5.5. Eight states have not (HI, KS, MI, MS, MT, NY, TX, and WV). Of those eight, Kansas and Michigan, have an in-house counsel registration requirement and Texas has a policy that allows in-house counsel that meet certain requirements to practice without a state license. Only five states have neither adopted a version of

Model Rule 5.5 nor enacted an in-house counsel registration rule they are HI, MS, MT, NY, and WV.⁵

1. In these states, there is no carve-out from the general rule for unauthorized practice for in-house counsel.
2. For example, in New York the law states:
 - (a) “A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction.”
 - (b) No in-house counsel exception exists.

B. It bears noting that several states that have adopted a version of amended Model Rule 5.5 have not adopted the in-house counsel exception included in subsection (d)(1) of the model rule, (e.g., Florida, Louisiana, and Minnesota). Importantly, those states do allow in-house counsel to practice upon registration.

IX. Does the state’s rule classify you as an in-house counsel?

- A. The rules are universal in requiring exclusivity of practice. The in-house attorney must only represent the employer or its subsidiaries and affiliates. The lawyer can’t also practice law for others or be part of a law firm.
- B. Some states restrict the kind of employer for which a non-admitted out-of-state lawyer may work.
 1. California: The employer must employ at least 10 people or have at least one lawyer registered in CA.
 2. Missouri: The employer must be a “corporation, its subsidiaries or affiliates; an association; a business; or a governmental entity” and the business must consist of “activities other than the practice of law or the provision of legal services.”

X. If there is an in-house counsel exception, what is the scope of acceptable practices for in-house counsel?

- A. *Limited*: In some states an in-house counsel lawyer is limited to non-pro hac vice activities.
 1. California: In-house counsel is not permitted to make court appearances in CA state courts or do anything else that requires pro hac vice admission.⁶

⁵ “State Implementation of ABA Model Rule 5.5”, October 26, 2009 American Bar Association, last viewed on February 23, 2010 at <http://www.abanet.org/cpr/mjp/home.html>.

⁶ 2009 California Rules of Court, Rule 9.46(b)(2)

2. North Carolina: In-house counsel is permitted to perform any legal services that do not require pro hac vice admission.
- B. *Broad/Unlimited*: In some states in-house counsel is treated the same as a lawyer who is admitted to practice in the state. This means a lawyer who meets all the other requirements will be allowed to appear in court.
1. Missouri: In-house counsel can do anything a lawyer licensed in Missouri can do.⁷
 2. Colorado: In-house counsel has authority to do anything as if licensed in Colorado.⁸

XI. If the scope of practice is limited, can in-house counsel apply for pro-hac vice admission?

If the scope of practice for in-house counsel is limited, then the in-house counsel lawyer must determine whether she can apply for pro hac admission. In many states, a resident in-house counsel lawyer will not have the option to apply because pro hac vice admission is restricted to out-of-state attorneys. Pro hac vice admission rules are also relevant each time a lawyer seeks to make an appearance in a state in which that the lawyer is not admitted.

- A. *Non-Residency Requirement*: The biggest factor to consider is the residency issue. Some states limit pro hac vice admission to non-residents. The purpose of this limitation is to encourage residents of a state to pass that state's bar exam and not rely on simply applying for pro hac vice admission whenever the lawyer needs to appear in court.
1. California: A lawyer is not eligible to apply for pro hac vice admission if he is a resident of California, is regularly employed in the state of California or is regularly engaged in substantial business, professional or other activities in California.⁹
 2. North Carolina: Pro hac vice admission is available only for attorneys domiciled in another state.
 3. Colorado: Lawyers seeking pro hac vice admission cannot be domiciled in Colorado or have a place of regular practice in Colorado.¹⁰
- B. *Repeated Appearances*:
1. California: Absent special circumstances, repeated pro hac vice appearances by a lawyer is a cause for denial of application.¹¹

⁷ Missouri Supreme Court Rules 8.105(c)

⁸ Colorado Rule 222(4)

⁹ 2009 California Rules of Court, Rule 9.40(a)

¹⁰ C.R.C.P. 220

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C. *Suspension of License:*

1. General Rule: If a lawyer is suspended or disbarred in any state, then likely the lawyer will have his pro hac vice admission denied. For example,
 - (a) California: The lawyer cannot be suspended or disbarred by any court.
 - (b) Missouri: A lawyer cannot even apply if under suspension or disbarment by the highest court in any state.

D. *Local Counsel:*

1. Generally, a lawyer must associate local counsel to be the attorney of record.
 - (a) North Carolina: A responsible lawyer licensed in North Carolina must be a sponsor in the motion for pro hac vice admission.
 - (b) California: The application for pro hac vice admission must include a California lawyer as the attorney of record.
 - (c) Missouri: Pro hac vice application must designate a member of the Missouri bar as associate counsel, and this designated lawyer must be the attorney of record.
 - (d) Colorado: An out-of-state lawyer must designate an associate lawyer who is admitted and licensed in Colorado.

E. *Fees*

1. California: Lawyer seeking pro hac vice admission must pay “reasonable fee” (as set by Bar of Governors of State Bar of California), not to exceed \$50.
2. North Carolina: The sponsoring NC lawyer must pay \$25 to the clerk of court and provide a statement of tax reporting. This statement affirms that the out-of-state lawyer will report “any income earned to the North Carolina Department of Revenue if required to do so by law.” In addition, the out-of-state lawyer must pay \$200.
3. Missouri: Lawyer seeking pro hac vice admission must pay \$100 for each court or an administrative tribunal appearance. The fee is not refunded if the judge does not allow the attorney to appear.¹²
4. Colorado: Lawyer seeking pro hac vice admission must pay \$250.

¹¹ 2009 California Rules of Court, Rule 9.40(b)

¹² Missouri Supreme Court Rules 6.01(m) (2009)

F. *Reciprocity*

1. North Carolina: Can only apply for pro hac vice admission if licensed in a state that allows NC lawyers to apply for pro hac vice admission.

G. *Familiarity with State's Laws and Rules of Practice and Disciplinary Jurisdiction*

1. General Rule: The lawyer must be familiar with the laws of the state in which the lawyer is making the pro hac vice appearance, even though the lawyer is not admitted to that state's bar. Additionally, the lawyer is subject to disciplinary action in the state.¹³

XII. When is a lawyer doing something that requires pro hac vice admission?

There are different rules and requirements for federal courts, state courts and administrative agencies. Many states define pro-hac vice activities as those situations in which the "forum requires pro hac vice" admission. The most obvious of these is trying a case in court, but may also include practices such as arbitration and mediation, or appearances before state administrative agencies. A lawyer needs to look at the local rules for a particular court or agency to determine if the lawyer has to apply for pro hac vice admission in that venue.

A. *California*:

1. Out-of-state Attorney Arbitration Counsel Program: out-of-state lawyer may apply for arbitration certificate and arbitrate in California¹⁴
2. No mention of mediation

B. *Missouri*: "Each case in each court or administrative tribunal in which the attorney seeks to appear"¹⁵

C. *New York*: Permits transitory practice by attorneys licensed elsewhere when such practice arises from representation of a client in the jurisdiction where the lawyer is licensed (e.g., taking depositions, contract negotiations).

D. *North Carolina*:

1. Any civil or criminal legal proceeding pending in the General Court of Justice of North Carolina.
2. NC Utilities Commission, Industrial Commission, Office of Administrative Hearings of NC or any administrative agency¹⁶.

¹³ 2009 California Rules of Court, Rule 9.40(f), Missouri Supreme Court Rules 9.03 (2004), C.R.C.P, Colorado 221(7) (2003)

¹⁴ Cal. Code Civ. Pro. § 1282.4; Cal. Ct. Rule 983.4

¹⁵ Missouri Supreme Court Rules 6.01(m)

¹⁶ N.C.G.S. § 84-4.1

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3. Court ordered mediation or arbitration¹⁷.

XIII. In-House Counsel Registration Rule: 31 states (AL, AZ, CA, CO, CT, DE, FL, ID, IL, IN, IA, KS, KY, LA, MA, MI, MN, MO, NV, NJ, ND, OH, OK, OR, PA, RI, SC, TN, UT, VA, WI) require an in-house lawyer to register with the state bar in order to practice law as in-house counsel.¹⁸ Even if the lawyer does not make any appearances in court and only serves in an advisory capacity, a lawyer in states with a registration rule will be required to comply with registration requirements. Registration generally includes filing an application, paying fees and meeting CLE credit requirements. The ABA has a recommended version of a Model Rule for Registration, which has not been adopted in any state, but provides guidelines and suggestions for how a state might frame its own registration rule. For example, the recommended model rule gives a lawyer 180 days from the commencement as in-house counsel to register. Failure to register could lead to the lawyer's being ineligible for admission on motion. The following states are provided as examples:

A. *California:*

1. Pay \$991 to register
2. 25 CLE hours in first year, 25 hours every three years after
3. Annual Registration: \$390
4. Must register within six months, otherwise application might be denied

B. *Colorado:*

1. Pay \$725 to register
2. 45 CLE hours in three years
3. Annual Registration \$225
4. No specified deadline as to when to apply or penalties for applying late

C. *Missouri:*

1. Pay \$1,240 to register
2. 15 CLE hours per year
3. Annual Registration \$305

¹⁷ Pro hac vice admission is not required for out-of-state attorneys representing clients in North Carolina in mediation or arbitration that is reasonably related to the attorney's representation of a client in a jurisdiction where the lawyer is licensed (i.e., contract based mediation or arbitration).

¹⁸ "Comparison of ABA Model Rule for Registration of In-House Counsel with State Versions", October 26, 2009, American Bar Association, last viewed on February 23, 2010 at http://www.abanet.org/cpr/mjp/in-house_comp.pdf.
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4. No specified deadline to apply

XIV. Practicing in States in which not a resident: The preceding analysis has focused on the rules for in-house counsel and the rules in the state in which the lawyer is living. But there is also the consideration of what to do if a lawyer lives in state 1, is licensed in state 2, and wants to practice law in a state 3?

A. *Look at State 3's law:*

1. Does State 3 have an in-house counsel rule?
2. Are you in-house counsel?
3. If yes, does state 3 grant unlimited authority or only for non-pro hac vice activities?
4. Are you doing activities that might require pro hac vice admission?
 - (a) Can you apply for admission pro hac vice admission?
 - i. Likely yes because you aren't a resident of state 3!
 - ii. Still need to meet other requirements, like associate local counsel and pay fees.
5. Do you have to register as in-house counsel with the state bar?
 - (a) Likely no because registration is usually restricted to in-state residents.
 - i. California and Colorado have residency requirements for registration of in-house counsel.
 - ii. See "In-house Counsel state by state comparison"

XV. Multijurisdictional Rules Applicable to All Lawyers: If not allowed to register, and lawyer is doing non-pro hac vice activities in state 3, might not be able to utilize the in-house lawyer rule.

A. *Solution:* Check if state has a rule similar to MR 5.5(c) which allows a lawyer to provide legal services on a temporary a basis that

1. are done in association with a lawyer who is licensed in the jurisdiction and who actively participates in the matter;
2. are reasonably related to pending or potential proceeding and lawyer expects to be authorized to appear before a tribunal;

3. are reasonably related to pending or potential arbitration or mediation if the services arise out of or are reasonably related to lawyer's practice in a jurisdiction in which lawyer is admitted; or
4. arise out of or are reasonably related to lawyer's practice in a jurisdiction in which the lawyer is admitted.

XVI. New York

- A. New York does not have an exception to the general rule for in-house counsel.
- B. In April 2009 the Appellate Division adopted new rules of professional conduct, modeling the rules after the ABA Model Rules. However, despite recommendations from the bar, no exception for in-house counsel or exception for out-of-state lawyers was passed.
- C. An in-house lawyer cannot practice law in NY without a NY law license.
- D. *State of NY v. Alfani*, 227 N.Y. 334, 337-38, 125 N.E. 671, 673 (N.Y. Ct. App. 1919)
 - (a) "According to the generally understood definition of the practice of law in this country, it embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts, and in addition conveyancing, the preparation of legal instruments of all kinds, and in general all advice to clients and all action taken for them in matters connected with the law. An attorney-at-law is one who engages in any of these branches of the practice of law."
- E. NY does require Pro Hac Vice Admission, which is granted "in the discretion of any court of record to participate in any matter in which the attorney is employed."¹⁹
 1. Must associate local counsel for the duration of pre-trial or trial proceedings.
 2. There doesn't appear to be a non-resident requirement, which means in-house counsel living in NY can apply for pro hac vice admission, unlike in NC and CA.

XVII. Brief Summary

- A. If the scope of the in-house counsel exception is limited to activities for which pro hac vice admission is not required, and pro hac vice admission is limited to out-of-state residents, resident in-house counsel will be prohibited from pro hac vice activities in the state.

¹⁹ § 520.11 Admission Pro Hac Vice, PART 520. RULES OF THE COURT OF APPEALS FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS AT LAW, New York
C-1139894v7 99000.00014

- B. An out-of-state lawyer may be prohibited from doing non-pro hac vice activities in a state in which he is not licensed unless the lawyer is practicing law in a state that has a version of 5.5(c) or 5.5(d)(1) for in-house counsel, or the state provides an exception by statute and the lawyer meets one of those exceptions.

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News
In-House

GCS FORGET ONE DETAIL: THEIR LICENSE

SURVEY FINDS EIGHT GCS WHO LACK LICENSES FOR THE STATES THEY WORK IN

Eliza **Amon**
Corporate Counsel

Companies expect their general counsel to pay attention to all the little details, but some legal chiefs have fallen behind in keeping their own affairs in order.

A survey by Corporate Counsel, an affiliate of The National Law Journal, of the Fortune 250 found eight GCs who are not properly licensed in the state in which they work. [NLJ, 11-20-06, 11-27-06].

This group includes Vernon Baker II of ArvinMeritor Inc.; Michael DeBacker of Dana Corp.; Robert Sloan of Entergy Corp.; Siri Marshall of General Mills Inc.; Arthur Hipwell of Humana Inc.; Terrance Carlson of Medtronic Inc.; Todd DuChene of Solec-tron Corp.; and John Donofrio of Visteon Corp.

Of these eight, Hipwell has no license at all, while the rest don't have the special license required by their states for in-house lawyers who haven't taken the local bar exam. All but DuChene said that they were in the process of obtaining proper licensing. In each instance, the local state bar or board of examiners could not verify if or when the lawyer had applied for a special license.

'You got me'

In interviews, the general counsel had various explanations for why they weren't properly licensed. 'You got me,' joked ArvinMeritor's Baker, who works at the auto-motive supplier's Troy, Mich., headquarters. Like several other GCs, he said that he just didn't know about the licensing rule in his current state of residence. Baker is licensed in Pennsylvania, but when he joined ArvinMeritor in 1999, he was living in New Jersey, which at the time didn't require additional licensing for in-house counsel who were admitted in another state.

Baker, who said he applied for Michigan's special certificate last February (be-

fore Corporate Counsel called him), heard about the state's rule through his local Association of Corporate Counsel chapter. Since then, Baker said, 'I've kind of been beating the drum saying I found out about it, [because] there are lots of folks I know who are not members of the bar.'

Other GCs, like Sloan of New Orleans-based Entergy, knew about their state's requirement but fell afoul of the rule due to individual circumstances. Louisiana began requiring a special certificate in April 2005. According to Entergy in-house counsel Allyson Howie, Sloan applied for his limited license that year. But after Hurricane Katrina hit in August 2005, Sloan was forced to work in Mississippi and Texas before he could return to the New Orleans office. Howie explains that Sloan and his staff thought his application was complete before Katrina. According to Howie, 'We didn't realize it hadn't been finished, ' until Corporate Counsel contacted the company.

Todd DuChene at Solectron, an electronic systems manufacturer based in Milpitas, Calif., was alone among the GCs in our survey in declining to confirm or deny his status. DuChene is not listed in the State Bar of California's database as a licensed attorney, according to bar official Diane Curtis.

Licensing requirements vary from state to state, and none of the GCs in Corporate Counsel 's survey would be required to obtain a special permit if they worked in, say, the District of Columbia, which, like 24 states, doesn't require in-house counsel to obtain a local license if they're licensed elsewhere. According to the American Bar Association, 26 states do require a special license for company lawyers.

Finding out whether a state requires a special license can sometimes be difficult. Take Maryland, for example. Officials at the state's bar association, the board of law examiners, the attorney grievance commission, the Court of Appeals clerk's office and a legal ethics emergency hotline were all unable to answer the question of whether Maryland demands a limited license -- or else answered incorrectly that it does. Finally, a bar counsel at the attorney grievance commission was able to confirm that according to Maryland law, in-house lawyers are not required to have any kind of licensing in the state.

Whether general counsel actually need to be licensed to practice law at all is a bigger philosophical question that some in-house attorneys have raised. Arthur Hipwell, who joined Louisville, Ky.-based Humana in 1979, let his Kentucky law license completely lapse in 1985. He explains that he did so because he believed he was essentially acting as a Humana executive rather than as a lawyer.

'I haven't been doing anything intentionally wrong,' said Hipwell, who became Humana's GC in 1992. He adds that he is now trying to figure out what he needs to do to rectify his licensing problem.

Though it may seem far-fetched to think that a company lawyer doesn't need to be licensed, plenty of small businesses operate without a general counsel, which means that their executives are making many of the kinds of legal decisions that an in-house lawyer would.

The number of unlicensed in-house counsel certainly isn't limited to the GCs identified in Corporate Counsel 's survey. Though nobody knows how many company attorneys aren't properly licensed, past surveys by the Association of Corporate Counsel of its membership suggest that the total could be in the hundreds or even thousands. There are some reports of in-house lawyers subsequently being denied admission to other state bars because of the unlawful practice of law, but they're rarely targeted by bar disciplinary counsel, who are more interested in going after attorneys for theft and fraud. Besides, few disciplinary bodies are going to independently pursue action against an unlicensed lawyer without a complaint, and few companies are likely to report their own lawyers for not being properly certified. Principally, the punishment comes in the form of public embarrassment that could impede career paths.

4/9/2007 NLJ 8, (Col. 4)

END OF DOCUMENT



4 of 13 DOCUMENTS

**BIRBROWER, MONTALBANO, CONDON & FRANK, P.C., et al., Petitioners, v.
THE SUPERIOR COURT OF SANTA CLARA COUNTY, Respondent; ESQ
BUSINESS SERVICES, INC., Real Party in Interest.**

No. S057125.

SUPREME COURT OF CALIFORNIA

*17 Cal. 4th 119; 949 P.2d 1; 70 Cal. Rptr. 2d 304; 1998 Cal. LEXIS 2; 97 Cal. Daily Op.
Service 51; 98 Daily Journal DAR 107*

January 5, 1998, Decided

SUBSEQUENT HISTORY: As Modified, February 25, 1998. Certiorari Denied October 5, 1998, *67 U.S.L. Week 3239*. Certiorari Denied October 5, 1998, Reported at: *1998 U.S. LEXIS 6358*.

PRIOR HISTORY: Superior Court of Santa Clara County. Super. Ct. No. CV737595. John F. Herlihy, Judge.

DISPOSITION: We conclude that Birbrower violated *section 6125* by practicing law in California. To the extent the fee agreement allows payment for those illegal local services, it is void, and Birbrower is not entitled to recover fees under the agreement for those services. The fee agreement is enforceable, however, to the extent it is possible to sever the portions of the consideration attributable to Birbrower's services illegally rendered in California from those attributable to Birbrower's New York services. Accordingly, we affirm the Court of Appeal judgment to the extent it concluded that Birbrower's representation of ESQ in California violated *section 6125*, and that Birbrower is not entitled to recover fees under the fee agreement for its local services. We reverse the judgment to the extent the court did not allow Birbrower to argue in favor of a severance of the illegal portion of the consideration (for the California fees) from the rest of the fee agreement, and remand for further proceedings consistent with this decision.

CASE SUMMARY:

PROCEDURAL POSTURE: Petitioner law firm appealed the decision of the Court of Appeals of California that affirmed the trial court, which granted summary judgment in favor of respondent client in a legal malpractice action. In addition, the court of appeals held that *Cal. Bus. & Prof. Code § 6125* barred petitioner from recovering all legal fees under the written fee agreement.

OVERVIEW: Petitioner law firm executed a written fee agreement with respondent client out of state. While representing respondent, petitioner's attorneys traveled to and gave legal advice in California. None of petitioner's attorneys were licensed to practice law in California. Respondent filed suit against petitioner alleging malpractice. The trial court granted partial summary judgment in favor of respondent. Petitioner filed for a writ of mandate in the court of appeals to direct the trial court to vacate the summary judgment order. The court of appeals denied the petition, affirmed the trial court's order, and held that *Cal. Bus. & Prof. Code § 6125* barred petitioner from recovering all legal fees under the fee agreement. Petitioner appealed, contending that *§ 6125* did not apply and the fee agreement was not wholly unenforceable. The court affirmed in part because petitioner violated *§ 6125* by practicing law in California and was not entitled to recover legal fees for those illegal services. The court reversed in part and held that petitioner was entitled to recover for legal services rendered outside of California to the extent that they were severable from the illegal services.

OUTCOME: The court partially affirmed the decision of the lower court that affirmed the trial court's grant of

17 Cal. 4th 119, *, 949 P.2d 1, **;
70 Cal. Rptr. 2d 304, ***; 1998 Cal. LEXIS 2

summary judgment in favor of respondent client because petitioner violated the prohibitions against the unauthorized practice of law. The court reversed in part because petitioner was not barred from recovering legal fees on all services rendered, only the services rendered in-state.

LexisNexis(R) Headnotes

Governments > State & Territorial Governments > Police Power

Legal Ethics > Unauthorized Practice of Law

[HN1] The general rule is that, although persons may represent themselves and their own interests regardless of State Bar membership, no one but an active member of the State Bar may practice law for another person in California. The prohibition against unauthorized law practice is within the state's police power and is designed to ensure that those performing legal services do so competently.

Legal Ethics > Unauthorized Practice of Law

[HN2] A violation of *Cal. Bus. & Prof. Code* § 6125 is a misdemeanor. Moreover, no one may recover compensation for services as an attorney at law in this state unless the person was at the time the services were performed a member of the State Bar.

Legal Ethics > Unauthorized Practice of Law

[HN3] The practice of law is the doing and performing services in a court of justice in any matter depending therein throughout its various stages and in conformity with the adopted rules of procedure.

Legal Ethics > Unauthorized Practice of Law

[HN4] Mere fortuitous or attenuated contacts will not sustain a finding that the unlicensed lawyer practiced law in California.

Legal Ethics > Unauthorized Practice of Law

[HN5] Exceptions to *Cal. Bus. & Prof. Code* § 6125 do exist, but are generally limited to allowing out-of-state attorneys to make brief appearances before a state court or tribunal. They are narrowly drawn and strictly interpreted.

Civil Procedure > Counsel > Admissions Pro Hac Vice Governments > Courts > Rule Application & Interpretation

Legal Ethics > Unauthorized Practice of Law

[HN6] With the permission of the California court in which a particular cause is pending, out-of-state counsel may appear before a court as counsel pro hac vice. *Cal. R. Ct. 983*. A court will approve a pro hac vice application only if the out-of-state attorney is a member in good standing of another state bar and is eligible to practice in any United States court or the highest court in another jurisdiction. *Cal. R. Ct. 983(a)*. The out-of-state attorney must also associate an active member of the California Bar as attorney of record and is subject to the Rules of Professional Conduct of the State Bar. *Cal. R. Ct. 983(a), (d)*.

Legal Ethics > Unauthorized Practice of Law

[HN7] The *Cal. R. Ct. 983* does not regulate practice before United States courts.

Governments > Courts > Court Personnel

Legal Ethics > Unauthorized Practice of Law

[HN8] *Cal. R. Ct. 988* permits the State Bar to issue registration certificates to foreign legal consultants who may advise on the law of the foreign jurisdiction where they are admitted. These consultants may not, however, appear as attorneys before a California court or judicial officer or otherwise prepare pleadings and instruments in California or give advice on the law of California or any other state or jurisdiction except those where they are admitted.

Civil Procedure > Alternative Dispute Resolution > Arbitrations > General Overview

International Law > Dispute Resolution > Arbitration & Mediation > General Overview

International Trade Law > Dispute Resolution > Arbitration

[HN9] Pursuant to *Cal. Civ. Proc. Code* § 1297.11 *et seq.* the Legislature has recognized an exception to *Cal. Bus. & Prof. Code* § 6125 in international disputes resolved in California under the state's rules for arbitration and conciliation of international commercial disputes. *Cal. Civ. Proc. Code* § 1297.11 *et seq.* This exception states that in a commercial conciliation in California involving international commercial disputes, the parties may appear in person or be represented or assisted by any person of their choice. A person assisting or representing a party need not be a member of the legal profession or licensed to practice law in California. *Cal. Code Civ. Proc. §1297.351*. Likewise, the Act does not apply to the preparation of or participation in labor negotiations and arbitrations arising under collective bargaining agreements in industries subject to federal law.

Governments > Legislation > Interpretation

[HN10] It is well-settled that, in determining the meaning of a statute, appellate courts look to its words and give them their usual and ordinary meaning.

Criminal Law & Procedure > Counsel > Right to Counsel > General Overview**Legal Ethics > Practice Qualifications****Legal Ethics > Unauthorized Practice of Law**

[HN11] The general rule is that an attorney is barred from recovering compensation for services rendered in another state where the attorney was not admitted to the bar.

Contracts Law > Contract Interpretation > Severability**Contracts Law > Defenses > Illegal Bargains****Criminal Law & Procedure > Counsel > Right to Counsel > General Overview**

[HN12] The law of contract severability is stated in *Cal. Civ. Code* § 1599, which defines partially void contracts: Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest.

SUMMARY:**CALIFORNIA OFFICIAL REPORTS SUMMARY**

A California corporation sued its New York law firm for legal malpractice, and the firm filed a counterclaim for attorney fees earned for work performed in both California and New York in the firm's efforts to resolve a dispute between the corporation and a third party. The trial court granted the corporation's motion for summary adjudication of the counterclaim, finding that the parties' fee agreement, which stipulated that California law governed all matters in the representation, was unenforceable, since the firm and its attorneys were not licensed to practice law in California as required by *Bus. & Prof. Code*, § 6125. (Superior Court of Santa Clara County, No. CV737595, John F. Herlihy, Judge.) The Court of Appeal, Sixth Dist., No. H014880, denied the firm's petition for a writ of mandate, concluding that the firm had violated § 6125 and that therefore the firm was barred from recovering its fees under the agreement for work performed in either California or New York.

The Supreme Court affirmed the judgment of the Court of Appeal to the extent it concluded that the firm's representation in California violated *Bus. & Prof. Code*, § 6125, and that the firm was not entitled to recover fees

under the fee agreement for its services in California, reversed the judgment of the Court of Appeal to the extent it did not allow the firm to argue in favor of a severance of the illegal portion of the consideration (the California fees) from the rest of the fee agreement, and remanded for further proceedings. The court held that the firm violated *Bus. & Prof. Code*, § 6125, by engaging in extensive unauthorized law practice in California. The court therefore held that the fee agreement was invalid to the extent it authorized payment for the substantial legal services the firm performed in California. However, the court held that the agreement might be valid to the extent it authorized payment for limited services the firm performed in New York. Remand was required to allow the firm to present evidence justifying its recovery of fees for those New York services, and for the client to produce contrary evidence. (Opinion by Chin, J., with George, C. J., Mosk, Baxter, Werdegar, and Brown, JJ., concurring. Dissenting opinion by Kennard, J.)

HEADNOTES**CALIFORNIA OFFICIAL REPORTS HEADNOTES**

Classified to California Digest of Official Reports

(1) Attorneys at Law § 6--Right to Practice--Unauthorized Practice of Law--Unlicensed Practice in California--Association of California Counsel. --No statutory exception to *Bus. & Prof. Code*, § 6125 (no person shall practice law in California unless that person is active member of State Bar), allows out-of-state attorneys to practice law in California as long as they associate local counsel in good standing with the State Bar.

(2) Attorneys at Law § 5--Right to Practice--State Bar Act. --The California Legislature enacted *Bus. & Prof. Code*, § 6125, which provides that no person shall practice law in California unless the person is an active member of the State Bar, in 1927 as part of the State Bar Act, a comprehensive scheme regulating the practice of law in the state. Since the passage of the act, the general rule has been that, although persons may represent themselves and their own interests regardless of State Bar membership, no one but an active member of the State Bar may practice law for another person in California. The prohibition against unauthorized law practice is within the state's police power and is designed to ensure that those performing legal services do so competently. A violation of *Bus. & Prof. Code*, § 6125, is a misdemeanor (*Bus. & Prof. Code*, § 6126). Moreover, no one may recover compensation for services as an attorney at law in this state unless that person was at the time the services were performed a member of the State Bar.

17 Cal. 4th 119, *, 949 P.2d 1, **;
70 Cal. Rptr. 2d 304, ***; 1998 Cal. LEXIS 2

(3) Attorneys at Law § 6--Right to Practice--Unauthorized Practice of Law--Unlicensed Practice in California--What Constitutes Practice in California: Words, Phrases, and Maxims--Practice of Law.

-- Under *Bus. & Prof. Code, § 6125* (no person shall practice law in California unless that person is active member of State Bar), the term "practice law" means the doing and performing services in a court of justice in any matter depending therein throughout its various stages and in conformity with the adopted rules of procedure. This includes legal advice and legal instrument and contract preparation, whether or not rendered in the course of litigation. The practice of law "in California" entails sufficient contact with the California client to render the nature of the legal service a clear legal representation. In addition to a quantitative analysis, a court determining whether a person has violated § 6125 must consider the nature of the unlicensed lawyer's activities in the state. Mere fortuitous or attenuated contacts is not sufficient. The primary inquiry is whether the unlicensed lawyer engaged in sufficient activities in the state or created a continuing relationship with the California client that included legal duties and obligations. The unlicensed lawyer's physical presence in the state is one factor, but it is not exclusive. For example, one may practice law in the state in violation of § 6125 although not physically present in California by communicating by modern technological means, but a person does not automatically practice law "in California" whenever that person "virtually" enters the state by electronic communication. Each case must be decided on its individual facts. (Disapproving to the extent it is inconsistent: *People v. Ring* (1937) 26 Cal.App.2d Supp. 768 [70 P.2d 281].)

(4) Attorneys at Law § 6--Right to Practice--Unauthorized Practice of Law--Unlicensed Practice in California--Exceptions to Prohibition.

--There are exceptions to *Bus. & Prof. Code, § 6125*, of the State Bar Act, which prohibits the practice of law in California unless the person practicing law is a member of the State Bar, but these exceptions are generally limited to allowing out-of-state attorneys to make brief appearances before a state court or tribunal. They are narrowly drawn and strictly interpreted. For example, an out-of-state attorney not licensed to practice in California may be permitted, by consent of a trial judge, to appear in California in a particular pending action. In addition, the California Rules of Court set forth procedures for allowing out-of-state attorneys to perform certain activities, and the Legislature has recognized an exception to *Bus. & Prof. Code, § 6125*, in international disputes resolved in California under the state's rules for arbitration and conciliation of international commercial disputes (*Code Civ. Proc., § 1297.351*). Furthermore, the act does not regulate practice before federal courts or apply to the prepara-

tion of or participation in labor negotiations and arbitrations arising under collective bargaining agreements.

(5a) (5b) Attorneys at Law § 6--Right to Practice--Unauthorized Practice of Law--Unlicensed Practice in California--Out-of-state Attorneys Not Licensed to Practice in California.

--A New York law firm whose attorneys were not licensed to practice law in California violated *Bus. & Prof. Code, § 6125* (no person shall practice law in California unless that person is active member of State Bar), in its efforts to resolve a dispute between its California corporate client and a third party. The firm engaged in extensive unauthorized law practice in California. Its attorneys traveled to California to discuss with the client and others various matters pertaining to the dispute, discussed strategy for resolving the dispute and advised the client on this strategy, made a settlement demand to the third party, and traveled to California to initiate arbitration proceedings before the matter was ultimately settled. By its plain terms, § 6125 applies to attorneys licensed in other states; it is not limited to nonattorneys. Since other states' laws may differ substantially from California's, barring out-of-state attorneys from practicing in California furthers the statute's goal of assuring competence of all attorneys practicing in California. Also, there is no exception to § 6125 for attorneys' work incidental to private arbitration or other alternative dispute resolution proceedings, and the Federal Arbitration Act did not preempt § 6125 in this case.

[See 1 Witkin, Cal. Procedure (4th ed. 1996) Attorneys, § 402.]

(6) Statutes § 30--Construction--Language--Plain Meaning. --In determining the meaning of a statute, the court looks to its words and give them their usual and ordinary meaning. If statutory language is clear and unambiguous, there is no need for construction, and courts should not indulge in it.

(7a) (7b) Attorneys at Law § 27--Attorney-client Relationship--Compensation of Attorneys--Out-of-state Attorneys Not Licensed to Practice in California--Severability of Work Performed in Other State.

--A fee arrangement between a New York law firm and a California corporate client was invalid, where the firm violated *Bus. & Prof. Code, § 6125* (no person shall practice law in California unless that person is active member of State Bar), in its efforts to resolve a dispute between the client and a third party. A person who violates § 6125 is not entitled to compensation for legal services performed, and no exception applied to this case. The exception for work performed in federal court did not apply, since none of the firm's work related to federal court practice. Furthermore, California does not recognize exceptions to § 6125 for services not involving

courtroom appearances or where the attorney makes full disclosure to the client. Thus, allowing the firm to recover its fees under the arrangement for work performed in California would constitute the enforcement of an illegal contract. However, the firm was entitled to seek recovery for work performed under the agreement in New York that was severable from its work performed in California. The object of the agreement might not have been entirely illegal; the illegality arose from any amount to be paid the firm that included payment for services rendered in violation of § 6125. The portion of the fee agreement might be enforceable to the extent that the illegal compensation could be severed from the rest of the agreement.

(8) Contracts § 13--Illegal Contracts--Enforceability--Severability. --Courts will not ordinarily aid in enforcing an agreement that is either illegal or against public policy. Illegal contracts, however, will be enforced under certain circumstances, such as when only a part of the consideration given for the contract involves illegality. In other words, notwithstanding an illegal consideration, courts may sever the illegal portion of the contract from the rest of the agreement. When the transaction is of such a nature that the good part of the consideration can be separated from that which is bad, the courts will make the distinction, for the law divides according to common reason, and having made void that which is against the law, lets the rest stand. If the court is unable to distinguish between the lawful and unlawful parts of the agreement, the illegality taints the entire contract, and the entire transaction is illegal and unenforceable.

COUNSEL: Halley, Cornel & Lynch, Roger C. Peters, Hoge, Fenton, Jones & Appel, David P. Eby, William J. Elfving and Scott R. Mosko for Petitioners.

Latham & Watkins, Joseph A. Wheelock, Jr., and Julie V. King as Amici Curiae on behalf of Petitioners.

No appearance for Respondent.

Hopkins & Carley, Jon Michaelson, Denise Y. Yamamoto and Robert W. Ricketson for Real Party in Interest.

Diane C. Yu, Lawrence C. Yee, Mark Torres-Gil and Robert M. Sweet as Amici Curiae on behalf of Real Party in Interest.

JUDGES: Opinion by Chin, J., with George, C. J., Mosk, Baxter, Werdegar, and Brown, JJ., concurring. Dissenting opinion by Kennard, J.

OPINION BY: CHIN

OPINION

[*124] [**2] [***306] **CHIN, J.** *Business and Professions Code section 6125* states: "No person shall practice law in California unless the person is an active member of the State Bar." ¹ We must decide whether an out-of-state law firm, not licensed to practice law in this state, violated *section 6125* when it performed legal services in California for a California-based client under a fee agreement stipulating that California law would govern all matters in the representation.

1 All further statutory references are to the Business and Professions Code unless otherwise specified.

Although we are aware of the interstate nature of modern law practice and mindful of the reality that large firms often conduct activities and serve clients in several states, we do not believe these facts excuse law firms from complying with *section 6125*. Contrary to the Court of Appeal, however, we do not believe the Legislature intended *section 6125* to apply to those services an out-of-state firm renders in its home state. We therefore conclude that, to the extent defendant law firm Birbrower, Montalbano, Condon & Frank, P.C. (Birbrower), practiced [**3] law in California without a license, it engaged in the unauthorized practice of law in this state. (§ 6125.) We also conclude that Birbrower's fee agreement with real party in interest ESQ Business Services, Inc. (ESQ), is invalid to the extent it authorizes payment for the substantial legal services Birbrower performed in California. If, however, Birbrower can show it generated fees under its agreement for limited services it performed in New York, and it earned those fees under the otherwise invalid fee agreement, it may, on remand, present to the trial court evidence justifying its recovery of fees for those New York services. Conversely, ESQ will have an opportunity to produce contrary evidence. Accordingly, we affirm the Court of Appeal judgment in part and reverse it in part, remanding for further proceedings consistent with this opinion.

I. BACKGROUND

The facts with respect to the unauthorized practice of law question are essentially undisputed. Birbrower is a professional law corporation incorporated in New York, with its principal place of business in New York. During 1992 and 1993, Birbrower attorneys, defendants Kevin F. Hobbs and Thomas A. Condon (Hobbs and Condon), performed substantial work in California relating to the law firm's representation of ESQ. Neither Hobbs nor Condon has ever been licensed to practice law in California. None of Birbrower's attorneys were licensed to practice law in California during Birbrower's ESQ representation.

ESQ is a California corporation with its principal place of business in Santa Clara County. In July 1992, the parties negotiated and executed the fee [*125] agreement in New York, providing that Birbrower would perform legal services for ESQ, including "All matters pertaining to the investigation of and prosecution of all claims and causes of action against Tandem Computers Incorporated [Tandem]." The "claims and causes of action" against Tandem, a Delaware corporation with its principal place of business in Santa Clara County, California, related to a software development and marketing contract between Tandem and ESQ dated March 16, 1990 (Tandem Agreement). The Tandem Agreement stated that "The internal laws of the State of California (irrespective of its choice of law principles) shall govern the validity of this Agreement, the construction of its terms, and the interpretation and enforcement of the rights and duties of the parties hereto." Birbrower asserts, and ESQ disputes, that ESQ knew Birbrower was not licensed to practice law in California.

While representing ESQ, Hobbs and Condon traveled to California on several occasions. In August 1992, they met in California with ESQ and its accountants. During these meetings, Hobbs and Condon discussed various matters related to ESQ's dispute with Tandem and strategy for resolving the dispute. They made recommendations and gave advice. During this California trip, Hobbs and Condon also met with Tandem representatives on four or five occasions during [***307] a two-day period. At the meetings, Hobbs and Condon spoke on ESQ's behalf. Hobbs demanded that Tandem pay ESQ \$ 15 million. Condon told Tandem he believed that damages would exceed \$ 15 million if the parties litigated the dispute.

Around March or April 1993, Hobbs, Condon, and another Birbrower attorney visited California to interview potential arbitrators and to meet again with ESQ and its accountants. Birbrower had previously filed a demand for arbitration against Tandem with the San Francisco offices of the American Arbitration Association (AAA). In August 1993, Hobbs returned to California to assist ESQ in settling the Tandem matter. While in California, Hobbs met with ESQ and its accountants to discuss a proposed settlement agreement Tandem authored. Hobbs also met with Tandem representatives to discuss possible changes in the proposed agreement. Hobbs gave ESQ legal advice during this trip, including his opinion that ESQ should not settle with Tandem on the terms proposed.

ESQ eventually settled the Tandem dispute, and the matter never went to arbitration. But before the settlement, ESQ and Birbrower modified the contingency fee [**4] agreement. ² The modification changed the fee arrangement from contingency to fixed fee, providing

that ESQ would pay Birbrower [*126] over \$ 1 million. The original contingency fee arrangement had called for Birbrower to receive "one-third (1/3) of all sums received for the benefit of the Clients . . . whether obtained through settlement, motion practice, hearing, arbitration, or trial by way of judgment, award, settlement, or otherwise"

2 Birbrower's brief refers to the "Fee Agreement" without specifying whether it means the original contingency agreement or the later modified fixed fee agreement. The operative fee agreement that would be enforced is in dispute, and, as explained below, is subject to clarification on remand. To avoid confusion, we simply refer to one "fee agreement" for purposes of our analysis.

In January 1994, ESQ sued Birbrower for legal malpractice and related claims in Santa Clara County Superior Court. Birbrower removed the matter to federal court and filed a counterclaim, which included a claim for attorney fees for the work it performed in both California and New York. The matter was then remanded to the superior court. There ESQ moved for summary judgment and/or adjudication on the first through fourth causes of action of Birbrower's counterclaim, which asserted ESQ and its representatives breached the fee agreement. ESQ argued that by practicing law without a license in California and by failing to associate legal counsel while doing so, Birbrower violated *section 6125*, rendering the fee agreement unenforceable. Based on these undisputed facts, the Santa Clara Superior Court granted ESQ's motion for summary adjudication of the first through fourth causes of action in Birbrower's counterclaim. The court also granted summary adjudication in favor of ESQ's third and fourth causes of action in its second amended complaint, seeking declaratory relief as to the validity of the fee agreement and its modification. (1) (See. fn. 3.) The court concluded that: (1) Birbrower was "not admitted to the practice of law in California"; (2) Birbrower "did not associate California counsel"; ³ (3) Birbrower "provided legal services in this state"; and (4) "The law is clear that no one may recover compensation for services as an attorney in this state unless he or she was a member of the state bar at the time those services were performed."

3 Contrary to the trial court's implied assumption, no statutory exception to *section 6125* allows out-of-state attorneys to practice law in California as long as they associate local counsel in good standing with the State Bar.

Although the trial court's order stated that the fee agreements were unenforceable, at the hearing on the

summary adjudication motion, the trial court also observed: "It seems to me that those are some of the issues that this Court has to struggle with, and then it becomes a question of if they aren't allowed to collect their attorney's fees here, I don't think that puts the attorneys in a position from being precluded from collecting all of their attorney's fees, only those fees probably that were generated by virtue of work that they performed in California and [***308] not that work that was performed in New York."

[*127] In granting limited summary adjudication, the trial court left open the following issues for resolution: ESQ's malpractice action against Birbrower, and the remaining causes of action in Birbrower's counterclaim, including Birbrower's fifth cause of action for quantum meruit (seeking the reasonable value of legal services provided).

Birbrower petitioned the Court of Appeal for a writ of mandate directing the trial court to vacate the summary adjudication order. The Court of Appeal denied Birbrower's petition and affirmed the trial court's order, holding that Birbrower violated *section 6125*. The Court of Appeal also concluded that Birbrower's violation barred the firm from recovering its legal fees under the written fee agreement, including fees generated in New York by the attorneys when they were physically present in New York, because the agreement included payment for California or "local" services for a California client in California. The Court of Appeal agreed with the trial court, however, in deciding that Birbrower could pursue its remaining claims against ESQ, including its equitable claim for recovery of its fees in quantum meruit.

[**5] We granted review to determine whether Birbrower's actions and services performed while representing ESQ in California constituted the unauthorized practice of law under *section 6125* and, if so, whether a *section 6125* violation rendered the fee agreement wholly unenforceable.

II. DISCUSSION

A. The Unauthorized Practice of Law

(2) The California Legislature enacted *section 6125* in 1927 as part of the State Bar Act (the Act), a comprehensive scheme regulating the practice of law in the state. (*J.W. v. Superior Court* (1993) 17 Cal. App. 4th 958, 965 [22 Cal. Rptr. 2d 527] (*J.W.*)). Since the Act's passage, [HN1] the general rule has been that, although persons may represent themselves and their own interests regardless of State Bar membership, no one but an active member of the State Bar may practice law for another person in California. (*Ibid.*) The prohibition against unauthorized law practice is within the state's police power

and is designed to ensure that those performing legal services do so competently. (*Id.* at p. 969.)

[HN2] A violation of *section 6125* is a misdemeanor. (§ 6126.) Moreover, "No one may recover compensation for services as an attorney at law in this state unless [the person] was at the time the services were performed a member of The State Bar." (*Hardy v. San Fernando Valley C. of C.* (1950) 99 Cal. App. 2d 572, 576 [222 P.2d 314] (*Hardy*)).

[*128] (3) Although the Act did not define the term [HN3] "practice law," case law explained it as "the doing and performing services in a court of justice in any matter depending therein throughout its various stages and in conformity with the adopted rules of procedure." (*People v. Merchants Protective Corp.* (1922) 189 Cal. 531, 535 [209 P. 363] (*Merchants*)). *Merchants* included in its definition legal advice and legal instrument and contract preparation, whether or not these subjects were rendered in the course of litigation. (*Ibid.*; see *People v. Ring* (1937) 26 Cal. App. 2d. Supp. 768, 772-773 [70 P.2d 281] (*Ring*) [holding that single incident of practicing law in state without a license violates § 6125]; see also *Mickel v. Murphy* (1957) 147 Cal. App. 2d 718, 721 [305 P.2d 993] [giving of legal advice on matter not pending before state court violates § 6125], disapproved on other grounds in *Biakanja v. Irving* (1958) 49 Cal. 2d 647, 651 [320 P.2d 16, 65 A.L.R.2d 1358].) *Ring* later determined that the Legislature "accepted both the definition already judicially supplied for the term and the declaration of the Supreme Court [in *Merchants*] that it had a sufficiently definite meaning to need no further definition. The definition . . . must be regarded as definitely establishing, for the jurisprudence of this state, the meaning of the term 'practice law.'" (*Ring, supra*, 26 Cal. App. 2d at p. Supp. 772.)

In addition to not defining the term "practice law," the Act also did not define the meaning of "in California." In today's legal practice, questions often arise concerning whether the phrase refers to the nature of the legal services, or restricts the Act's application [***309] to those out-of-state attorneys who are physically present in the state.

Section 6125 has generated numerous opinions on the meaning of "practice law" but none on the meaning of "in California." In our view, the practice of law "in California" entails sufficient contact with the California client to render the nature of the legal service a clear legal representation. In addition to a quantitative analysis, we must consider the nature of the unlicensed lawyer's activities in the state. [HN4] Mere fortuitous or attenuated contacts will not sustain a finding that the unlicensed lawyer practiced law "in California." The primary inquiry is whether the unlicensed lawyer engaged in suf-

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ficient activities in the state, or created a continuing relationship with the California client that included legal duties and obligations.

Our definition does not necessarily depend on or require the unlicensed lawyer's physical presence in the state. Physical presence here is one factor we may consider in deciding whether the unlicensed lawyer has violated section 6125, but it is by no means exclusive. For example, one may practice law in the state in violation of section 6125 although not physically present here by advising a California client on California law in connection [**6] with a [*129] California legal dispute by telephone, fax, computer, or other modern technological means. Conversely, although we decline to provide a comprehensive list of what activities constitute sufficient contact with the state, we do reject the notion that a person *automatically* practices law "in California" whenever that person practices California law anywhere, or "virtually" enters the state by telephone, fax, e-mail, or satellite. (See e.g., *Baron v. City of Los Angeles* (1970) 2 Cal. 3d 535, 543 [86 Cal. Rptr. 673, 469 P.2d 353, 42 A.L.R.3d 1036] (*Baron*) ["practice law" does not encompass all professional activities].) Indeed, we disapprove *Ring*, *supra*, 26 Cal. App. 2d Supp. 768, and its progeny to the extent the cases are inconsistent with our discussion. We must decide each case on its individual facts.

This interpretation acknowledges the tension that exists between interjurisdictional practice and the need to have a state-regulated bar. As stated in the American Bar Association Model Code of Professional Responsibility, Ethical Consideration EC 3-9, "Regulation of the practice of law is accomplished principally by the respective states. Authority to engage in the practice of law conferred in any jurisdiction is not per se a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where he is not permitted by law or by court order to do so. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by the states. In furtherance of the public interest, the legal profession should discourage regulation that unreasonably imposes territorial limitations upon the right of a lawyer to handle the legal affairs of his client or upon the opportunity of a client to obtain the services of a lawyer of his choice in all matters including the presentation of a contested matter in a tribunal before which the lawyer is not permanently admitted to practice." (Fns. omitted.) *Baron* implicitly agrees with this canon. (*Baron*, *supra*, 2 Cal. 3d at p. 543.)

If we were to carry the dissent's narrow interpretation of the term "practice law" to its logical conclusion, we would effectively limit section 6125's application to those cases in which nonlicensed out-of-state lawyers appeared in a California courtroom without permission.

(Dis. opn., *post*, at pp. 142-144.) Clearly, neither *Merchants*, *supra*, 189 Cal. at page 535, nor *Baron*, *supra*, 22 Cal. 3d at page 543, supports the dissent's fanciful interpretation of the thoughtful guidelines announced in those cases. Indeed, the dissent's definition of "practice law" ignores *Merchants* altogether, and, in so doing, substantially undermines the Legislature's intent to protect the public from those giving unauthorized legal advice and counsel.

(4) [HN5] Exceptions to section 6125 do exist, but are generally limited to allowing out-of-state attorneys to make brief appearances before a state court [*130] or tribunal. They are narrowly drawn and strictly interpreted. For example, an out-of-state attorney not licensed to practice in California may be permitted, [***310] *by consent of a trial judge*, to appear in California in a particular pending action. (See *In re McCue* (1930) 211 Cal. 57, 67 [293 P. 47]; 1 Witkin, Cal. Procedure (4th ed. 1996) Attorneys, § 402, p. 493.)

In addition, [HN6] with the permission of the California court in which a particular cause is pending, out-of-state counsel may appear before a court as counsel pro hac vice. (*Cal. Rules of Court*, rule 983.) A court will approve a pro hac vice application only if the out-of-state attorney is a member in good standing of another state bar and is eligible to practice in any United States court or the highest court in another jurisdiction. (*Cal. Rules of Court*, rule 983(a).) The out-of-state attorney must also associate an active member of the California Bar as attorney of record and is subject to the Rules of Professional Conduct of the State Bar. (*Cal. Rules of Court*, rules 983(a), (d); see *Rules Prof. Conduct*, rule 1-100(D)(2) [includes lawyers from other jurisdictions authorized to practice in this state].)

[HN7] The Act does not regulate practice before United States courts. Thus, an out-of-state attorney engaged to render services in bankruptcy proceedings was entitled to collect his fee. (*Cowen v. Calabrese* (1964) 230 Cal. App. 2d 870, 872 [41 Cal. Rptr. [**7] 441, 11 A.L.R.3d 903] (*Cowen*); but see U.S. Dist. Ct. Local Rules, Northern Dist. Cal., rule 11-1(b); Eastern Dist. Cal., rule 83-180; Central Dist. Cal., rule 2.2.1; Southern Dist. Cal., rule 83.3 c.1.a. [today conditioning admission to their respective bars (with certain exceptions for some federal government employees) on active membership in good standing in California State Bar].)

Finally, [HN8] *California Rules of Court*, rule 988, permits the State Bar to issue registration certificates to foreign legal consultants who may advise on the law of the foreign jurisdiction where they are admitted. These consultants may not, however, appear as attorneys before a California court or judicial officer or otherwise prepare pleadings and instruments in California or give advice on

the law of California or any other state or jurisdiction except those where they are admitted.

[HN9] The Legislature has recognized an exception to section 6125 in international disputes resolved in California under the state's rules for arbitration and conciliation of international commercial disputes. (*Code Civ. Proc.*, § 1297.11 *et seq.*) This exception states that in a commercial conciliation in California involving international commercial disputes, "The parties may appear in person or be represented or assisted by any person of their choice. A person assisting or representing a party need not be a member of the legal [*131] profession or licensed to practice law in California." (*Code Civ. Proc.*, § 1297.351.) Likewise, the Act does not apply to the preparation of or participation in labor negotiations and arbitrations arising under collective bargaining agreements in industries subject to federal law. (See e.g., *Teamsters Local v. Lucas Flour Co.* (1962) 369 U.S. 95, 103 [82 S. Ct. 571, 576-577, 7 L. Ed. 2d 593]; see also Labor-Management Relations Act of 1947, 29 U.S.C. § 185(a).)

B. The Present Case

(5a) The undisputed facts here show that neither Baron's definition (*Baron, supra*, 2 Cal. 3d at p. 543) nor our "sufficient contact" definition of "practice law in California" (*ante*, at pp. 128-129) would excuse Birbrower's extensive practice in this state. Nor would any of the limited statutory exceptions to section 6125 apply to Birbrower's California practice. As the Court of Appeal observed, Birbrower engaged in unauthorized law practice in California on more than a limited basis, and no firm attorney engaged in that practice was an active member of the California State Bar. As noted (*ante*, at p. 125), in 1992 and 1993, Birbrower attorneys traveled to California to discuss with ESQ and others various matters pertaining to the dispute between ESQ and Tandem. Hobbs and Condon discussed strategy for resolving the dispute and advised ESQ on this strategy. Furthermore, during California meetings with Tandem representatives in August 1992, Hobbs demanded Tandem pay \$ 15 million, and Condon told Tandem he believed damages in the matter would exceed that amount if the parties proceeded to litigation. Also in California, Hobbs met with ESQ for the stated purpose of helping to reach a settlement agreement and to discuss the agreement that was eventually proposed. Birbrower attorneys also traveled to California to initiate arbitration proceedings before the matter was settled. As the Court of Appeal concluded, ". . . the Birbrower firm's [***311] in-state activities clearly constituted the [unauthorized] practice of law" in California.

Birbrower contends, however, that section 6125 is not meant to apply to any out-of-state attorneys. Instead,

it argues that the statute is intended solely to prevent nonattorneys from practicing law. This contention is without merit because it contravenes the plain language of the statute. Section 6125 clearly states that *no person* shall practice law in California unless that person is a member of the State Bar. The statute does not differentiate between attorneys or nonattorneys, nor does it excuse a person who is a member of another state bar. (6) [HN10] It is well-settled that, in determining the meaning of a statute, we look to its words and give them their usual and ordinary meaning. (*DaFonte v. Up-Right, Inc.* (1992) 2 Cal. 4th 593, 601 [7 Cal. Rptr. 2d 238, 828 P.2d 140]; *Kimmel v. Goland* (1990) 51 Cal. 3d 202, 208-209 [271 Cal. Rptr. 191, 793 P.2d 524].) "[I]f statutory language is 'clear [*132] and unambiguous there is no need for construction, and courts should not indulge in it.' [Citation.]" (*Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal. 3d 211, 218 [188 Cal. Rptr. 115, 655 P.2d 317].) (5b) The plain meaning controls our interpretation of the statute here because Birbrower has not shown "that [***8] the natural and customary import of the statute's language is either 'repugnant to the general purview of the act' or for some other compelling reason, should be disregarded . . ." (*Id.* at pp. 218-219.)

Birbrower next argues that we do not further the statute's intent and purpose--to protect California citizens from incompetent attorneys--by enforcing it against out-of-state attorneys. Birbrower argues that because out-of-state attorneys have been licensed to practice in other jurisdictions, they have already demonstrated sufficient competence to protect California clients. But Birbrower's argument overlooks the obvious fact that other states' laws may differ substantially from California law. Competence in one jurisdiction does not necessarily guarantee competence in another. By applying section 6125 to out-of-state attorneys who engage in the extensive practice of law in California without becoming licensed in our state, we serve the statute's goal of assuring the competence of all attorneys practicing law in this state. (*J.W., supra*, 17 Cal. App. 4th at p. 969.)

California is not alone in regulating who practices law in its jurisdiction. Many states have substantially similar statutes that serve to protect their citizens from unlicensed attorneys who engage in unauthorized legal practice. Like section 6125, these other state statutes protect local citizens "against the dangers of legal representation and advice given by persons not trained, examined and licensed for such work, whether they be laymen or lawyers from other jurisdictions." (*Spivak v. Sachs* (1965) 16 N.Y.2d 163 [263 N.Y.S.2d 953, 211 N.E.2d 329, 331].) Whether an attorney is duly admitted in another state and is, in fact, competent to practice in California is irrelevant in the face of section 6125's language

and purpose. (See *Ranta v. McCarney* (N.D. 1986) 391 N.W.2d 161, 163 (*Ranta*) [noting that out-of-state attorney's competence is irrelevant because purpose of North Dakota law against unauthorized law practice is to assure competence *before* attorney practices in state].) Moreover, as the North Dakota Supreme Court pointed out in *Ranta*: "It may be that such an [out-of-state attorney] exception is warranted, but such a plea is more properly made to a legislative committee considering a bill enacting such an exception or to this court in its rule-making function than it is in a judicial decision." (*Id. at p. 165.*) Similarly, a decision to except out-of-state attorneys licensed in their own jurisdictions from *section 6125* is more appropriately left to the California Legislature.

[*133] Assuming that *section 6125* does apply to out-of-state attorneys not licensed here, Birbrower alternatively asks us to create an exception to *section 6125* for work incidental to private arbitration or other alternative dispute resolution proceedings. Birbrower points to fundamental differences between private arbitration and legal proceedings, including procedural differences relating to discovery, rules of evidence, compulsory process, cross-examination of witnesses, and other areas. (See *Alexander v. Gardner-Denver* [***312] *Co. (1974) 415 U.S. 36, 57-58 [94 S. Ct. 1011, 1024-1025, 39 L. Ed. 2d 147]* [illustrating differences between arbitration and court proceedings].) As Birbrower observes, in light of these differences, at least one court has decided that an out-of-state attorney could recover fees for services rendered in an arbitration proceeding. (See *Williamson v. John D. Quinn Const. Corp. (S.D.N.Y. 1982) 537 F. Supp. 613, 616 (Williamson).*)

In *Williamson*, a New Jersey law firm was employed by a client's New York law firm to defend a construction contract arbitration in New York. It sought to recover fees solely related to the arbitration proceedings, even though the attorney who did the work was not licensed in New York, nor was the firm authorized to practice in the state. (*Williamson, supra, 537 F. Supp. at p. 616.*) In allowing the New Jersey firm to recover its arbitration fees, the federal district court concluded that an arbitration tribunal is not a court of record, and its fact-finding process is not similar to a court's process. (*Ibid.*) The court relied on a local state bar report concluding that representing a client in an arbitration was not the unauthorized practice of law. (*Ibid.*; see Com. Rep., Labor Arbitration and the Unauthorized Practice of Law (May/June 1975) 30 Record of the Association [**9] of the Bar of the City of New York, No. 5/6, p. 422 et seq.) But as amicus curiae the State Bar of California observes, "While in *Williamson* the federal district court did allow the New Jersey attorneys to recover their fees, that decision clearly is distinguishable on its facts. . . . [P] In the instant case, it is undisputed that none of the

time that the New York attorneys spent in California was" spent in arbitration; *Williamson* thus carries limited weight. (See also *Moore v. Conliffe* (1994) 7 Cal. 4th 634, 637-638 [29 Cal. Rptr. 2d 152, 871 P.2d 204] [private AAA arbitration functionally equivalent to judicial proceeding to which litigation privilege applies].) Birbrower also relies on California's rules for arbitration and conciliation of international commercial disputes for support. (*Code Civ. Proc., § 1297.11 et seq.*) As noted (*ante*, at pp. 130-131), these rules specify that, in an international commercial conciliation or arbitration proceeding, the person representing a party to the conciliation or arbitration is not required to be a licensed member of the State Bar. (*Code Civ. Proc., § 1297.351.*)

We decline Birbrower's invitation to craft an arbitration exception to *section 6125*'s prohibition of the unlicensed practice of law in this state. Any [*134] exception for arbitration is best left to the Legislature, which has the authority to determine qualifications for admission to the State Bar and to decide what constitutes the practice of law. (*Baron, supra, 2 Cal. 3d at pp. 540-541*; see also *Eagle Indem. Co. v. Industrial Acc. Com. (1933) 217 Cal. 244, 247 [18 P.2d 341]*.) Even though the Legislature has spoken with respect to *international* arbitration and conciliation, it has not enacted a similar rule for private arbitration proceedings. Of course, private arbitration and other alternative dispute resolution practices are important aspects of our justice system. (See *Moncharsh v. Heily & Blase* (1992) 3 Cal. 4th 1, 9 [10 Cal. Rptr. 2d 183, 832 P.2d 899] [noting a strong public policy in favor of arbitration].) *Section 6125*, however, articulates a strong public policy favoring the practice of law in California by licensed State Bar members. In the face of the Legislature's silence, we will not create an arbitration exception under the facts presented. (See *Baron, supra, 2 Cal. 3d at pp. 540-541* [membership, character, and conduct of attorneys is proper subject of state legislative regulation and control].)⁴

4 The dissent focuses on an arbitrator's powers in an attempt to justify its conclusion that an out-of-state attorney may engage in the unlicensed representation of a client in an arbitration proceeding. (See dis. opn., *post*, at pp. 144-145.) This narrow focus confuses the issue here. An arbitrator's powers to enforce a contract or "award an essentially unlimited range of remedies" has no bearing on the question whether unlicensed out-of-state attorneys may represent California clients in an arbitration proceeding. (Dis. opn., *post*, at p. 145.) Moreover, any discussion of the practice of law in an arbitration proceeding is irrelevant here because the parties settled the underlying case before arbitration proceedings became necessary. Nonetheless, we emphasize that,

in the absence of clear legislative direction, we decline to create an exception allowing unlicensed legal practice in arbitration in violation of *section 6125*.

[***313] In its reply brief to the State Bar's amicus curiae brief, Birbrower raises for the first time the additional argument that the Federal Arbitration Act (FAA) preempted the rules governing the AAA proposed arbitration and *section 6125*. The FAA regulates arbitration that deals with maritime transactions and contracts involving the transportation of goods through interstate or foreign commerce. (9 U.S.C. § 1 *et seq.*) Although we need not address the question under *California Rules of Court, rule 29(b)(1)*, and note the parties' settlement agreement rendered the arbitration unnecessary, we reject the argument for its lack of merit. First, the parties incorporated a California choice-of-law provision in the Tandem Agreement, indicating they intended to apply California law in any necessary arbitration, and they have not shown that California law in any way conflicts with the FAA. Moreover, in interpreting the California Arbitration Act stay provisions (*Code Civ. Proc.*, § 1281.2, *subd. (c)*), the high court observed that the FAA does not contain an express preemptive provision, nor does it "reflect a congressional intent to occupy the entire field of arbitration." (*Volt Info. Sciences v. [**10] Leland [**135] Stanford Jr. U. (1989) 489 U.S. 468, 477 [109 S. Ct. 1248, 1255, 103 L. Ed. 2d 488].*)

Finally, Birbrower urges us to adopt an exception to *section 6125* based on the unique circumstances of this case. Birbrower notes that "Multistate relationships are a common part of today's society and are to be dealt with in commonsense fashion." (*In re Estate of Waring (1966) 47 N.J. 367 [221 A.2d 193, 197].*) In many situations, strict adherence to rules prohibiting the unauthorized practice of law by out-of-state attorneys would be "grossly impractical and inefficient." (*Ibid.*; see also *Appell v. Reiner (1964) 43 N.J. 313 [204 A.2d 146, 148] [strict adherence to rule barring out-of-state lawyers from representing New Jersey residents on New Jersey matters may run against the public interest when case involves inseparable multistate transactions].*)

Although, as discussed (*ante*, at pp. 129-130), we recognize the need to acknowledge and, in certain cases, to accommodate the multistate nature of law practice, the facts here show that Birbrower's extensive activities within California amounted to considerably more than any of our state's recognized exceptions to *section 6125* would allow. Accordingly, we reject Birbrower's suggestion that we except the firm from *section 6125*'s rule under the circumstances here.

C. Compensation for Legal Services

(7a) Because Birbrower violated *section 6125* when it engaged in the unlawful practice of law in California, the Court of Appeal found its fee agreement with ESQ unenforceable in its entirety. Without crediting Birbrower for some services performed in New York, for which fees were generated under the fee agreement, the court reasoned that the agreement was void and unenforceable because it included payment for services rendered to a California client in the state by an unlicensed out-of-state lawyer. The court opined that "When New York counsel decided to accept [the] representation, it should have researched California law, including the law governing the practice of law in this state." The Court of Appeal let stand, however, the trial court's decision to allow Birbrower to pursue its fifth cause of action in quantum meruit.⁵ We agree with the Court of Appeal to the extent it barred Birbrower from recovering fees generated under the fee agreement for the unauthorized legal services it performed in California. We disagree with the same court to the extent it implicitly barred Birbrower [*136] from recovering fees generated under the fee agreement for the limited legal services the firm performed in New York.

5 We observe that ESQ did not seek (and thus the court did not grant) summary adjudication on the Birbrower firm's quantum meruit claim for the reasonable value of services rendered. Birbrower thus still has a cause of action pending in quantum meruit.

It is [HN11] a general rule that an attorney is barred from recovering compensation for [***314] services rendered in another state where the attorney was not admitted to the bar. (*Annot., Right of Attorney Admitted in One State to Recover Compensation for Services Rendered in Another State Where He Was Not Admitted to the Bar (1967) 11 A.L.R.3d 907; Hardy, supra, 99 Cal. App. 2d at p. 576.*) The general rule, however, has some recognized exceptions.

Initially, Birbrower seeks enforcement of the entire fee agreement, relying first on the federal court exception discussed *ante*, at page 130. (*Cowen, supra, 230 Cal. App. 2d at p. 872; In re McCue, supra, 211 Cal. at p. 66; see Annot., supra, 11 A.L.R.3d at pp. 912-913 [citing Cowen as an exception to general rule of nonrecovery].*) This exception does not apply in this case; none of Birbrower's activities related to federal court practice.

A second exception on which Birbrower relies to enforce its entire fee agreement relates to "Services not involving courtroom appearance." (*Annot., supra, 11 A.L.R.3d at p. 911 [citing Wescott v. Baker (1912) 83 N.J.L. 460 [85 A. 315]].*) California has implicitly rejected this broad exception through its comprehensive definition of what it means to "practice law." Thus, the

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exception Birbrower seeks for all services performed outside the courtroom [**11] in our state is too broad under section 6125.

Some jurisdictions have adopted a third exception to the general rule of nonrecovery for in-state services, if an out-of-state attorney "makes a full disclosure to his client of his lack of local license and does not conceal or misrepresent the true facts." (*Annot., supra, 11 A.L.R.3d at p. 910.*) For example, in *Freeling v. Tucker (1930) 49 Idaho 475 [289 P. 85]*, the court allowed an Oklahoma attorney to recover for services rendered in an Idaho probate court. Even though an Idaho statute prohibited the unlicensed practice of law, the court excused the Oklahoma attorney's unlicensed representation because he had not falsely represented himself nor deceptively held himself out to the client as qualified to practice in the jurisdiction. (*Id. at p. 86.*) In this case, Birbrower alleges that ESQ at all times knew that the firm was not licensed to practice law in California. Even assuming that is true, however, we reject the full disclosure exception for the same reasons we reject the argument that section 6125 is not meant to apply to nonattorneys. Recognizing these exceptions would contravene not only the plain language of section 6125 but the underlying policy of assuring the competence of those practicing law in California.

[*137] Therefore, as the Court of Appeal held, none of the exceptions to the general rule prohibiting recovery of fees generated by the unauthorized practice of law apply to Birbrower's activities in California. Because Birbrower practiced substantial law in this state in violation of section 6125, it cannot receive compensation under the fee agreement for any of the services it performed in California. Enforcing the fee agreement in its entirety would include payment for the unauthorized practice of law in California and would allow Birbrower to enforce an illegal contract. (*See Hardy, supra, 99 Cal. App. 2d at p. 576.*)

Birbrower asserts that even if we agree with the Court of Appeal and find that none of the above exceptions allowing fees for unauthorized California services apply to the firm, it should be permitted to recover fees for those limited services it performed exclusively in New York under the agreement. In short, Birbrower seeks to recover under its contract for those services it performed for ESQ in New York that did not involve the practice of law in California, including fee contract negotiations and some corporate case research. Birbrower thus alternatively seeks reversal of the Court of Appeal's judgment to the extent it implicitly precluded the firm from seeking fees generated in New York under the fee agreement.

We agree with Birbrower that it may be able to recover fees under the fee agreement for the limited legal

services it performed for ESQ in New York to the extent they did not constitute practicing law in California, even though those services were performed for a California client. Because section 6125 applies to the practice of law in California, it does not, in general, regulate law practice in other states. (*See ante, at pp. 128-131.*) [***315] Thus, although the general rule against compensation to out-of-state attorneys precludes Birbrower's recovery under the fee agreement for its actions in California, the severability doctrine may allow it to receive its New York fees generated under the fee agreement, if we conclude the illegal portions of the agreement pertaining to the practice of law in California may be severed from those parts regarding services Birbrower performed in New York. (*See Annot., supra, 11 A.L.R.3d at pp. 908-909, and cases cited [bar on recovery by out-of-state attorney extends only to compensation for local services]; see also Ranta, supra, 391 N.W.2d at p. 166 [remanding case to determine which fees related to practice locally and which related to attorney's work in state where he was licensed].*)

[HN12] The law of contract severability is stated in *Civil Code section 1599*, which defines partially void contracts: "Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest." In [*138] *Calvert v. Stoner (1948) 33 Cal. 2d 97 [199 P.2d 297] (Calvert)*, we considered whether a contingent fee contract containing a provision restricting a party's right to compromise a suit [**12] without her attorney's consent was void entirely or severable in part. (*Id. at p. 103.*) We observed that "It is unnecessary . . . to determine whether the particular provision is invalid as against public policy. It is sufficient to observe, assuming such invalidity, that in this state . . . the compensation features of the contract are not thereby deemed affected if in other respects the contract is lawful." (*Id. at p. 104.*) *Calvert* concluded that the invalid provision preventing the client from compromising the suit could be severed from the valid provision for attorney fees. (*Ibid.*)

The fee agreement between Birbrower and ESQ became illegal when Birbrower performed legal services in violation of section 6125. (8) It is true that courts will not ordinarily aid in enforcing an agreement that is either illegal or against public policy. (*Asdourian v. Araj (1985) 38 Cal. 3d 276, 291 [211 Cal. Rptr. 703, 696 P.2d 95]; Homami v. Iranzadi (1989) 211 Cal. App. 3d 1104, 1109-1110 [260 Cal. Rptr. 6].*) Illegal contracts, however, will be enforced under certain circumstances, such as when only a part of the consideration given for the contract involves illegality. In other words, notwithstanding an illegal consideration, courts may sever the illegal portion of the contract from the rest of the agree-

ment. (*Keene v. Harling* (1964) 61 Cal. 2d 318, 320 [38 Cal. Rptr. 513, 392 P.2d 273] (*Keene*).) " ' "When the transaction is of such a nature that the good part of the consideration can be separated from that which is bad, the Courts will make the distinction, for the . . . law . . . [divides] according to common reason; and having made that void that is against law, lets the rest stand. . . " ' " (*Id.* at pp. 320-321, quoting *Jackson v. Shawl* (1865) 29 Cal. 267, 272.) If the court is unable to distinguish between the lawful and unlawful parts of the agreement, "the illegality taints the entire contract, and the entire transaction is illegal and unenforceable." (*Keene, supra*, 61 Cal. 2d at p. 321.)

In *Keene*, the defendant agreed to pay the plaintiffs \$ 50,000 in exchange for their business involving coin-operated machines. The defendant defaulted on his payments, and the plaintiffs sued. The defendant argued that the sales agreement was void because part of the sale involved machines that were illegal under a California penal statute. The court affirmed the lower court's determination that the price of the illegal machines could be deducted from the amount due on the original contract. "Since the consideration on the buyer's side was money, the court properly construed the contract by equating the established market price of the illegal machines to a portion of the money consideration." (*Keene, supra*, 61 Cal. 2d at p. 323.) Thus, even though the entire contract was for a fixed sum, the court was able [*139] to value the illegal portion of the contract and separate it from the rest of the amount due under the agreement.

(7b) In this case, the parties entered into a contingency fee agreement followed by a [***316] fixed fee agreement. ⁶ ESQ was to pay money to Birbrower in exchange for Birbrower's legal services. The object of their agreement may not have been entirely illegal, assuming ESQ was to pay Birbrower compensation based in part on work Birbrower performed in New York that did not amount to the practice of law in California. The illegality arises, instead, out of the amount to be paid to Birbrower, which, if paid fully, would include payment for services rendered in California in violation of *section 6125*.

6 The parties apparently do not dispute that they modified the original contingency fee arrangement to call for a fixed fee payment of over \$ 1 million. They dispute, however, whether the original contingency fee arrangement became operative once again when ESQ failed to make a payment to Birbrower under the fixed fee arrangement. Because the trial court and the Court of Appeal believed the fee agreements to be unenforceable in their entirety, neither court addressed issues relating to the fee agreements themselves or the parties' disputes surrounding

those agreements. We agree with the Court of Appeal that issues surrounding the two fee agreements and the applicability of either section 6147 (regulating contents of contingency fee agreements) or the State Bar *Rules of Professional Conduct*, rules 3-300 and 4-200 (governing fees for legal services), are best resolved by the trial court on remand.

Therefore, we conclude the Court of Appeal erred in determining that the fee [**13] agreement between the parties was entirely unenforceable because Birbrower violated *section 6125*'s prohibition against the unauthorized practice of law in California. Birbrower's statutory violation may require exclusion of the portion of the fee attributable to the substantial illegal services, but that violation does not necessarily entirely preclude its recovery under the fee agreement for the limited services it performed outside California. (*Calvert, supra*, 33 Cal. 2d at pp. 104-105.)

Thus, the portion of the fee agreement between Birbrower and ESQ that includes payment for services rendered in New York may be enforceable to the extent that the illegal compensation can be severed from the rest of the agreement. On remand, therefore, the trial court must first resolve the dispute surrounding the parties' fee agreement and determine whether their agreement conforms to California law. If the parties and the court resolve the fee dispute and determine that one fee agreement is operable and does not violate any state drafting rules, the court may sever the illegal portion of the consideration (the value of the California services) from the rest of the fee agreement. Whether the trial court finds the contingent fee agreement or the fixed fee agreement to be valid, it will determine whether some amount is due under the valid agreement. The trial court must then determine, on [*140] evidence the parties present, how much of this sum is attributable to services Birbrower rendered in New York. The parties may then pursue their remaining claims.

III. DISPOSITION

We conclude that Birbrower violated *section 6125* by practicing law in California. To the extent the fee agreement allows payment for those illegal local services, it is void, and Birbrower is not entitled to recover fees under the agreement for those services. The fee agreement is enforceable, however, to the extent it is possible to sever the portions of the consideration attributable to Birbrower's services illegally rendered in California from those attributable to Birbrower's New York services. Accordingly, we affirm the Court of Appeal judgment to the extent it concluded that Birbrower's representation of ESQ in California violated *section 6125*, and that Birbrower is not entitled to recover fees under

the fee agreement for its local services. We reverse the judgment to the extent the court did not allow Birbrower to argue in favor of a severance of the illegal portion of the consideration (for the California fees) from the rest of the fee agreement, and remand for further proceedings consistent with this decision.

George, C. J., Mosk, J., Baxter, J., Werdegar, J., and Brown, J., concurred.

DISSENT BY: KENNARD

DISSENT

KENNARD, J.,

Dissenting.--In California, it is a misdemeanor to practice law when one is not a member of the State Bar. (*Bus. & Prof. Code*, § 6125, 6126, *subd. (a)*.) In this case, New York lawyers who were not members of the California Bar [***317] traveled to this state on several occasions, attempting to resolve a contract dispute between their clients and another corporation through negotiation and private arbitration. Their clients included a New York corporation and a sister corporation incorporated in California; the lawyers had in previous years represented the principal owners of these corporations. The majority holds that the New York lawyers' activities in California constituted the unauthorized practice of law. I disagree.

The majority focuses its attention on the question of whether the New York lawyers had engaged in the practice of law *in California*, giving scant consideration to a decisive preliminary inquiry: whether, through their activities here, the New York lawyers had engaged in the practice of law *at all*. In my view, the record does not show that they did. In reaching a contrary conclusion, the majority relies on an overbroad definition of the term "practice of law." I would adhere to this court's decision in *Baron v. City of* [*141] *Los Angeles* (1970) 2 Cal. 3d 535 [86 Cal. Rptr. 673, 469 P.2d 353, 42 A.L.R.3d 1036], more narrowly defining the practice of law as the representation of another in a judicial proceeding or an activity requiring the application of that degree of legal knowledge and technique possessed only by a trained legal mind. Under this definition, this case presents a triable issue of material fact as to whether the New York [**14] lawyers' California activities constituted the practice of law.

I

Defendant Birbrower, Montalbano, Condon & Frank, P.C. (hereafter Birbrower) is a New York law firm. Its lawyers are not licensed to practice law in California.

Kamal Sandhu was the sole shareholder of ESQ Business Services Inc., a New York corporation (hereafter ESQ-NY), of which his brother Iqbal Sandhu was the vice-president. Beginning in 1986, Birbrower lawyers represented the Sandhu family in various business matters. In 1990, Kamal Sandhu asked Birbrower lawyer Kevin Hobbs to review a proposed software development and marketing agreement between ESQ-NY and Tandem Computers Incorporated (hereafter Tandem). The agreement granted Tandem worldwide distribution rights to computer software created by ESQ-NY. The agreement also provided that it would be governed by California law and that, according to Birbrower's undisputed assertion, disputes were to be resolved by arbitration under the rules of the American Arbitration Association. ESQ-NY and Tandem signed the agreement.

Thereafter, a second corporation, also named ESQ Business Services, Inc. (hereafter ESQ-CAL), was incorporated in California, with Iqbal Sandhu as a principal shareholder. In 1991, ESQ-CAL consulted Birbrower lawyers concerning Tandem's performance under the agreement. In 1992, ESQ-NY and ESQ-CAL jointly hired Birbrower to resolve the dispute with Tandem, including the investigation and prosecution of claims against Tandem if necessary. ESQ-NY and ESQ-CAL entered into a contingency fee agreement with Birbrower; this agreement was executed in New York but was later modified to a fixed fee agreement in California.

The efforts of the Birbrower lawyers to resolve the dispute with Tandem included several brief trips to California. On these trips, Birbrower lawyers met with officers of both ESQ-NY and ESQ-CAL and with representatives of Tandem; they also interviewed arbitrators and participated in negotiating the settlement of the dispute with Tandem. (Maj. opn., *ante*, at p. 125.) On February 12, 1993, Birbrower initiated an arbitration proceeding against [*142] Tandem, on behalf of both ESQ-NY and ESQ-CAL, by filing a claim with the American Arbitration Association in San Francisco, California. Before an arbitration hearing was held, the dispute with Tandem was settled.

In January 1994, ESQ-CAL and Iqbal Sandhu, the principal shareholder, sued Birbrower for malpractice. Birbrower cross-complained to recover its fees under the fee agreement. Plaintiffs ESQ-CAL and Iqbal Sandhu thereafter amended their complaint to add ESQ-NY as a plaintiff. Plaintiffs moved for summary adjudication, asserting [***318] the fee agreement was unenforceable because the Birbrower lawyers had engaged in the unauthorized practice of law in California. The trial court agreed, and granted plaintiffs' motion. The Court of Appeal upheld the trial court's ruling, as does a majority of this court today.

II

Business and Professions Code section 6125 states: "No person shall practice law in California unless the person is an active member of the State Bar." The Legislature, however, has not defined what constitutes the practice of law.

Pursuant to its inherent authority to define and regulate the practice of law (see, e.g., *Merco Constr. Engineers, Inc. v. Municipal Court* (1978) 21 Cal. 3d 724, 728 [147 Cal. Rptr. 631, 581 P.2d 636]; *In re Lavine* (1935) 2 Cal. 2d 324, 328; *People v. Turner* (1850) 1 Cal. 143, 150), this court in 1922 defined the practice of law as follows: " [A]s the term is generally understood, the practice of the law is the doing and performing services in a court of justice in any matter depending therein throughout its various stages and in conformity with the adopted rules of procedure. But in a larger sense it includes legal advice and counsel and the preparation of legal instruments and contracts by which the legal rights are secured although such matter may or may not be [**15] depending in a court.' " (*People v. Merchants Protective Corp.* (1922) 189 Cal. 531, 535 [209 P. 363] (*Merchants*).) The *Merchants* court adopted this definition verbatim from a decision by the Indiana Court of Appeals, *Eley v. Miller* (1893) 7 Ind.App. 529 [34 N.E. 836, 837-838]. (*Merchants, supra*, at p. 535.)

In 1970, in *Baron v. City of Los Angeles, supra*, 2 Cal. 3d 535, 542 (*Baron*), this court reiterated the *Merchants* court's definition of the term "practice of law." We were quick to point out in *Baron*, however, that "ascertaining whether a particular activity falls within this general definition may be a formidable endeavor." (*Id.* at p. 543.) *Baron* emphasized "that it is not the whole spectrum of professional services of lawyers with which the State Bar [*143] Act is most concerned, but rather it is the smaller area of activities defined as the 'practice of law.' " (*Ibid.*) It then observed: "In close cases, the courts have determined that the resolution of legal questions for another by advice and action is practicing law 'if difficult or doubtful legal questions are involved which, to safeguard the public, reasonably demand the application of a trained legal mind.' [Citations.]" (*Ibid.*, italics added.) *Baron* added that "if the application of legal knowledge and technique is required, the activity constitutes the practice of law" (*Ibid.*, italics added.) This definition is quite similar to that proposed by Cornell Law School Professor Charles Wolfram, the chief reporter for the American Law Institute's Restatement of the Law Governing Lawyers: "The correct form of the test [for the practice of law] should inquire whether the matter handled was of such complexity that only a person trained as a lawyer should be permitted to deal with it." (Wolfram, *Modern Legal Ethics* (1986) p. 836.)

The majority asserts that the definition of practice of law I have stated above misreads this court's opinion in *Baron*. (Maj. opn., *ante*, at p. 129.) But what the majority characterizes as "the dissent's fanciful interpretation of the [*Baron* court's] thoughtful guidelines" (*ibid.*) consists of language I have quoted directly from *Baron*.

The majority also charges that the narrowing construction of the term "practice of law" that this court adopted in *Baron* "effectively limit[s] section 6125's application to those cases in which nonlicensed out-of-state lawyers appeared in a California courtroom without permission." (Maj. opn., *ante*, at p. 129.) Fiddlesticks. Because the *Baron* definition encompasses all activities that " 'reasonably demand application of a trained legal mind' " (*Baron, supra*, 2 Cal. 3d at p. 543), the majority's assertion would be true only if there were no activities, apart from court appearances, requiring [***319] application of a trained legal mind. Many attorneys would no doubt be surprised to learn that, for example, drafting testamentary documents for large estates, preparing merger agreements for multinational corporations, or researching complex legal issues are not activities that require a trained legal mind.

According to the majority, use of the *Baron* definition I have quoted would undermine protection of the public from incompetent legal practitioners. (Maj. opn., *ante*, at p. 129.) The *Baron* definition provides ample protection from incompetent legal practitioners without infringing upon the public's interest in obtaining advice and representation from other professionals, such as accountants and real estate brokers, whose skills in specialized areas may overlap with those of lawyers. This allows the public the freedom to choose professionals who may be able to provide the public with [*144] needed services at a more affordable cost. (See Wolfram, *Modern Legal Ethics, supra*, at p. 831; Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions* (1981) 34 Stan.L.Rev. 1, 97-98; Weckstein, *Limitations on the Right to Counsel: The Unauthorized Practice of Law*, 1978 Utah L.Rev. 649, 650.) As this court has recognized, there are proceedings in which nonattorneys "are competent" [**16] to represent others without undermining the protection of the public interest. (*Consumers Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal. 3d 891, 913-914 [160 Cal. Rptr. 124, 603 P.2d 41].)

The majority, too, purports to apply the definition of the practice of law as articulated in *Baron, supra*, 2 Cal. 3d 535. The majority, however, focuses only on *Baron*'s quotation of the general definition of the practice of law set forth in *Merchants, supra*, 189 Cal. 531, 535. The majority ignores both the ambiguity in the *Merchants* definition and the manner in which *Baron* resolved that

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70 Cal. Rptr. 2d 304, ***; 1998 Cal. LEXIS 2

ambiguity. The majority apparently views the practice of law as encompassing *any* "legal advice and legal instrument and contract preparation, whether or not these subjects were rendered in the course of litigation." (Maj. opn., *ante*, at p. 128.)

The majority's overbroad definition would affect a host of common commercial activities. On point here are comments that Professor Deborah Rhode made in a 1981 article published in the Stanford Law Review: "For many individuals, most obviously accountants, bankers, real estate brokers, and insurance agents, it would be impossible to give intelligent counsel without reference to legal concerns that such statutes reserve as the exclusive province of attorneys. As one [American Bar Association] official active in unauthorized practice areas recently acknowledged, there is growing recognition that 'all kinds of other professional people are practicing law almost out of necessity.' 'Moreover, since most legislation does not exempt gratuitous activity, much advice commonly imparted by friends, employers, political organizers, and newspaper commentators constitutes unauthorized practice. For example, although the organized bar has not yet evinced any inclination to drag [nationally syndicated advice columnist] Ann Landers through the courts, she is plainly fair game under extant statutes [proscribing the unauthorized practice of law]." (Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions*, *supra*, 34 Stan.L.Rev. at p. 47, fns. omitted.)

Unlike the majority, I would for the reasons given above adhere to the more narrowly drawn definition of the practice of law that this court articulated in *Baron*, *supra*, 2 Cal. 3d 535, 543: the representation of another in a judicial proceeding or an activity requiring the application of that degree [*145] of legal knowledge and technique possessed only by a trained legal mind. Applying that definition here, I conclude that the trial court should not have granted summary adjudication for plaintiffs based on the Birbrower lawyers' California activities. That some or all of those activities related to arbitration does not necessarily establish that they constituted the practice of law, as I shall explain.

[***320] III

As I mentioned earlier, Birbrower's clients had a software development and marketing agreement with Tandem. The agreement provided that its validity, interpretation, and enforcement were to be governed by California law. It also contained an arbitration provision. After a dispute arose pertaining to Tandem's performance under the agreement, Birbrower initiated an arbitration on behalf of its clients by filing a claim with the American Arbitration Association in San Francisco, and held meetings in California to prepare for an arbitration hear-

ing. Because the dispute with Tandem was settled, the arbitration hearing was never held.

As I explained in part II, *ante*, this court in *Baron*, *supra*, 2 Cal. 3d 535, 543, defined the term "practice of law" in narrower terms than the court had done earlier in *Merchants*, *supra*, 189 Cal. 531, 535, which simply adopted verbatim the general definition set forth in an 1893 decision of the Indiana Court of Appeals. Under the narrower definition articulated in *Baron*, the practice of law is the representation of another in a judicial proceeding or an activity requiring the application of that degree of legal knowledge and technique possessed only by a trained legal mind.

[**17] Representing another in an arbitration proceeding does not invariably present difficult or doubtful legal questions that require a trained legal mind for their resolution. Under California law, arbitrators are "not ordinarily constrained to decide according to the rule of law . . ." (*Moncharsh v. Heily & Blase* (1992) 3 Cal. 4th 1, 11 [10 Cal. Rptr. 2d 183, 832 P.2d 899].) Thus, arbitrators, "unless specifically required to act in conformity with rules of law, may base their decision upon broad principles of justice and equity, and in doing so may expressly or impliedly reject a claim that a party might successfully have asserted in a judicial action." [Citations.] (*Id.* at pp. 10-11.) They "are not bound to award on principles of dry law, but may decide on principles of equity and good conscience, and make their award *ex aequo et bono* [according to what is just and good]." [Citation.] (*Id.* at p. 11, original brackets.) For this reason, "the existence of an *error of law* apparent on the face of the [arbitration] award *that causes substantial injustice* does not provide grounds for judicial review." (*Id.* at p. 33, italics added; contra, *id.* at pp. 33-40 (conc. and dis. opn. of Kennard, J.).)

[*146] Moreover, an arbitrator in California can award any remedy "arguably based" on "the contract's general subject matter, framework or intent." (*Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal. 4th 362, 381 [36 Cal. Rptr. 2d 581, 885 P.2d 994].) This means that "an arbitrator in a commercial contract dispute may award an essentially unlimited range of remedies, whether or not a court could award them if it decided the same dispute, so long as it can be said that the relief draws its 'essence' from the contract and not some other source." (*Id.* at p. 391 (dis. opn. of Kennard, J.).)

To summarize, under this court's decisions, arbitration proceedings are not governed or constrained by the rule of law; therefore, representation of another in an arbitration proceeding, including the activities necessary to prepare for the arbitration hearing, does not necessarily require a trained legal mind.

Commonly used arbitration rules further demonstrate that legal training is not essential to represent another in an arbitration proceeding. Here, for example, Birbrower's clients agreed to resolve any dispute arising under their contract with Tandem using the American Arbitration Association's rules, which allow any party to be "represented by counsel *or other authorized representative*." (Am. Arbitration Assn., Com. Arbitration Rules (July 1, 1996) § 22, italics added.) Rules of other arbitration organizations also allow for representation by nonattorneys. For instance, the Rules of Procedure of the Inter-American Commercial Arbitration Commission, article IV provides: "The parties may be represented or assisted by persons of their choice." By federal law, this rule applies in all arbitrations between a United States citizen and a citizen of another [***321] signatory to the Inter-American Convention on International Commercial Arbitration, unless the arbitrating parties have expressly provided otherwise. (9 U.S.C. § 303(b); Inter-Am. Convention on International Com. Arbitration, art. 3.)

The American Arbitration Association and other major arbitration associations thus recognize that nonattorneys are often better suited than attorneys to represent parties in arbitration. The history of arbitration also reflects this reality, for in its beginnings arbitration was a dispute-resolution mechanism principally used in a few specific trades (such as construction, textiles, ship chartering, and international sales of goods) to resolve disputes among businesses that turned on factual issues uniquely within the expertise of members of the trade. In fact, "rules of a few trade associations forbid representation by counsel in arbitration proceedings, because of their belief that it would complicate what might otherwise be simple proceedings." (Grenig, *Alternative Dispute Resolution* (1997) § 5.2, p. 81.) The majority gives no adequate justification for its decision to deprive parties of their [*147] freedom of contract and to make it a crime for anyone but California lawyers to represent others in arbitrations in California.

[**18] In addressing an issue similar to that presented here, a federal court held that a firm of New Jersey lawyers not licensed to practice law in New York

was entitled to recover payment for legal services rendered in a New York arbitration proceeding. (*Williamson v. John D. Quinn Const. Corp.* (S.D.N.Y. 1982) 537 F. Supp. 613 (*Williamson*)). In allowing recovery of fees, the court cited a report by the Association of the Bar of The City of New York: "The report states, 'it should be noted that no support has to date been found in judicial decision, statute or ethical code for the proposition that representation of a party in any kind of arbitration amounts to the practice of law.' The report concludes '[t]he Committee is of the opinion that representation of a party in an arbitration proceeding by a nonlawyer or a lawyer from another jurisdiction is not the unauthorized practice of law.' " (*Id.* at p. 616, quoting Com. Rep., Labor Arbitration and the Unauthorized Practice of Law (May/June 1975) 30 Record of the Association of the Bar of The City of New York, No. 5/6, at pp. 422, 428.)

The majority's attempt to distinguish *Williamson*, *supra*, 537 F. Supp. 613, from this case is unpersuasive. The majority points out that in *Williamson*, the lawyers of the New Jersey firm actually rendered services at the New York arbitration hearing, whereas here the New York lawyers never actually appeared at an arbitration hearing in California. (Maj. opn., *ante*, at pp. 133, 134, fn. 4.) The majority distinguishes *Williamson* on the ground that in this case no arbitration hearing occurred. Does the majority mean that an actual appearance at an arbitration hearing is not the practice of law, but that preparation for arbitration proceedings is?

In this case, plaintiffs have not identified any specific California activities by the New York lawyers of the Birbrower firm that meet the narrow definition of the term "practice of law" as articulated by this court in *Baron*, *supra*, 2 Cal. 3d 535, 543. Accordingly, I would reverse the judgment of the Court of Appeal and direct it to remand the matter to the trial court with directions to vacate its order granting plaintiff's motion for summary adjudication and to enter a new order denying that motion.

On February 25, 1998, the opinion was modified to read as printed above.

STATE IMPLEMENTATION OF ABA MJP POLICIES

- (1) RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW**
- (2) RULE 8.5: DISCIPLINARY AUTHORITY; CHOICE OF LAW**
- (3) *PRO HAC VICE* ADMISSION**
- (4) ADMISSION BY MOTION**
- (5) FOREIGN LEGAL CONSULTANTS**
- (6) TEMPORARY PRACTICE BY FOREIGN LAWYERS**

AL	<p>1) Rule 5.5 Unauthorized Practice of Law. ((Effective September 19, 2006) Similar to ABA Model Rule 5.5. Uses the term “temporary or incidental basis”. Refers to Rule IX of the Rules Governing Admission to the Alabama State Bar for in-house counsel. http://www.alabar.org/rulechanges/Rule%205.5_Rules%20of%20Professional%20Code_Unauthorized%20Practice%20of%20Law_Supreme%20Court%20order.pdf</p> <p>2) Rule 8.5 Jurisdiction. No change.</p> <p>3) Rule VII. Appearance of Foreign Attorneys Pro Hac Vice. Rules Governing Admission to the Alabama State Bar. http://www.alabar.org/members/vice.cfm</p> <p>4) Rule III. Persons Entitles to Admission Without Examination. Rules Governing Admission to the Alabama State Bar. http://www.alabar.org/rulechanges/Rule%20III_Reciprocity_Supreme%20Court%20Order.pdf</p> <p>5) Not addressed. Do not have a rule.</p> <p>6) Not addressed. Do not have a rule.</p>
AK	<p>The Alaska Supreme Court signed off on new Alaska Rules of Professional Conduct based primarily on the Ethics 2000 recommendations adopted by the ABA House of Delegates at a rules conference on October 28, 2008. The new rules will replace the current rules effective April 15, 2009. The new rules are available at http://www.state.ak.us/courts/sco/sco1680.pdf.</p> <p>1) Rule 5.5 is identical to ABA Model Rule 5.5.</p> <p>2) Rule 8.5 is identical to ABA Model Rule 8.5.</p> <p>3) Court’s civil rules committee to review. Have a Rule: Rule 81 (a)(2) of the Alaska Rules of Civil Procedure http://www.state.ak.us/courts/civ2.htm#81</p> <p>4) Court’s civil rules committee to review. Have a Rule: Alaska Bar Rule 2, Section 2. http://www.alaskabar.org/library/admissionsrules.pdf</p> <p>5) Court’s civil rules committee to review. Have a Rule: Rules of the Alaska Bar Association, Rule 44.1</p> <p>6) Court’s civil rules committee to review. Do not have a Rule.</p>

<p>AZ</p>	<p>On June 8, 2004, the Supreme Court of the State of Arizona entered an order adopting amended Rules 5.5 (Unauthorized Practice of Law) and Rule 8.5 (Jurisdiction), effective December 1, 2004, allowing multijurisdictional practice of law by lawyers admitted in another United States jurisdiction.</p> <p>(1) ER 5.5 Unauthorized Practice of Law Rule 5.5 is identical to ABA Model Rule 5.5 but adds three paragraphs making it clear that: lawyers engaged in multijurisdictional practice must advise their clients that they are not admitted to practice law in Arizona and must obtain the client's informed consent to the representation; out of state lawyers who appear in court or before any administrative hearing officer must comply with the <i>pro hac vice</i> admission rules; and out of state lawyers are subject to the Arizona Rules of Professional Conduct and the Rules of the Supreme Court regarding attorney discipline.</p> <p>(2) ER 8.5 Jurisdiction Identical to ABA Model Rule 8.5.</p> <p>(3) Amended <i>Pro Hac Vice</i> Admission Rule, effective January 1, 2009: http://www.supreme.state.az.us/rules/2008%20Rules%20a/R-07-0029.pdf</p> <p>(4) Rule 38(h), Rules of the Supreme Court, Admission on Motion, adopted September 8, 2008, effective January 1, 2010. http://www.supreme.state.az.us/rules/2008%20Rules%20a/R060017.pdf</p> <p>(5) Declined to recommend adoption. Have a rule. 17A, A.R.S. Sup. Ct. Rules, Rule 33(f) (Effective June 1, 1998)</p> <p>(6) Declined to recommend adoption. Do not have a rule.</p>
<p>AR</p>	<p>On March 3, 2005 the Arkansas Supreme Court entered an order amending the Arkansas Rules of Professional Conduct, effective May 1, 2005: http://courts.state.ar.us/opinions/2005a/20050303/arpc2005.html</p> <p>(1) Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law Identical to ABA Model Rule 5.5.</p> <p>(2) Rule 8.5: Disciplinary Authority; Choice of Law Identical to ABA Model Rule 8.5.</p> <p>(3) Conducting review. Have a rule already: Arkansas Supreme Court Rule XIV http://courts.state.ar.us/rules/barrule.html#XIV</p> <p>(4) Admission by Motion Rule. On February 26, 2004 the Arkansas Supreme Court adopted an Admission by Motion Rule. Similar to ABA Rule but requires reciprocity, fee (\$1500) and designate Clerk of the Court for service of process. (Effective October 1, 2004) http://courts.state.ar.us/opinions/2004a/20040226/admission.html</p> <p>(5) Conducting review. Do not have a rule.</p> <p>(6) Conducting review. Do not have a rule.</p>

CA	<p>On April 8, 2004, the California Supreme Court adopted the recommendations of the Court’s Multijurisdictional Practice Implementation Committee. The new Rules are effective November 15, 2004.</p> <p>http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=12501&id=15641</p> <p>(1) and (2) Rules 966 (part of litigation) and 967 (non-litigation matter) permit lawyers who are licensed to practice in a U.S. jurisdiction, other than California, to temporarily practice law in California without registering with the state bar. Under Rule 967, a “material aspect” of the matter has to take place in a jurisdiction other than California and in which the lawyer is licensed to practice law. Rule 964 allows <i>registered</i> legal services lawyer to practice up to 3 years. Rule 965 allows for <i>registered</i> in-house counsel. Out-of-state lawyers subject to California laws, Rules of Professional Conduct, courts and the State Bar. Fees for in-house/legal services lawyers: \$550 to apply, \$363 moral character check, \$390 annual State Bar fee and 25 hours CLE.</p> <p>(3) Declined to recommend adoption. Have a rule: Rule 983 of the California Rules of Court.</p> <p>(4) Declined to recommend adoption. Do not have a rule.</p> <p>(5) Declined to recommend adoption. Have a rule: Rule 988 of the California Rules of Court (Enacted April 2, 1987)</p> <p>(6) Conducting review. Do not have a rule.</p>
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<p>CO</p> <p>(1) and (2) Rule 221. Out-Of-State Attorney-<i>Pro Hac Vice</i> Admission (Adopted prior to ABA recommendations, effective January 1, 2003) Similar to ABA <i>Model Rule on Pro Hac Vice Admission</i>, \$250 fee.</p> <p>(3) Colorado Rules of Civil Procedure, Rule 220. Out-Of-State Attorney – Conditions of Practice (effective January 1, 2003).</p> <p>An out-of-state lawyer may practice law in Colorado except that an out-of-state lawyer who wishes to appear in any state court of record must comply with the rule concerning <i>pro hac vice</i> admission and an out-of-state lawyer who wishes to appear before any administrative tribunal must comply with the rule concerning <i>pro hac vice</i> admission before state agencies. An out-of-state lawyer practicing law under this rule is subject to the Colorado Rules of Professional Conduct and rules of procedure regarding attorney discipline and disability proceedings.</p> <p>http://www.cobar.org/group/display.cfm?GenID=2735</p> <p>See also, Rule 8.5 Jurisdiction, http://www.cobar.org/group/display.cfm?GenID=2085</p> <p>(4) Not addressed. Have a rule, reciprocity required. Colorado Admission Rule 201.3(1)</p> <p>http://www.coloradosupremecourt.com/BLE/Forms/Rules.htm</p> <p>(5) Not addressed. Do not have a Foreign Legal Consultant Rule.</p> <p>(6) Not addressed. Do not have a rule.</p>
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CT	<p>In August 2007 the Connecticut Supreme Court adopted an amended Rule 5.5, an in-house counsel registration rule and a definition of the practice of law. Amended Rule 5.5 and the in-house counsel registration rules are effective January 1, 2008. As of January 1, 2009, foreign lawyers may register as in-house counsel. http://www.jud.ct.gov/CBEC/housecounsel.htm#Amendment to Sec. 2-15A</p> <p>(1) Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law Similar to ABA Model Rule 5.5 but requires registration, notification to Statewide Bar Council and payment of an administrative fee; requires reciprocity; the services under (c) (4) must be “substantially related the services provided to an existing client” and requires registration of in-house counsel under a new in-house counsel rule.</p> <p>(2) Rule 8.5: Disciplinary Authority; Choice of Law Identical Model Rule 8.5.</p> <p>(3) Not addressed. Have a rule. Rules of the Superior Court Regulating Admission to the Bar: Sec. 2-16. Appearing Pro Hac Vice http://www.jud.state.ct.us/CBEC/#Sec.%202-16</p> <p>(4) Not addressed. Section 2-13, Connecticut Superior Court Rules Regulating Admission to the Bar http://www.jud.state.ct.us/CBEC/#Sec.%202-13.</p> <p>(5) Not addressed. Have a rule. Connecticut Rules of Court, Rules of Practice for the Superior Court, General Provisions, Chapter 2. Attorneys § 2-17, Superior Court Rules Regulating Admission To The Bar, Sections 2-17 To 2-21 CT R SUPER CT GEN § 2-17 (Effective 1991).</p> <p>(6) Not addressed. Do not have a rule. Have a GATS Task Force.</p>
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<p>DE</p>	<p>(1) Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law On October 16, 2007 the Delaware Supreme Court amended Rule 5.5(c) so that it now reads: (c) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:</p> <p>(2) Rule 8.5: Disciplinary Authority; Choice of Law Identical to ABA Model Rule 8.5 (Effective July 1, 2003). http://courts.state.de.us/supreme/pdf/FinalDLRPCclean.pdf</p> <p>(3) Conducting review. Have a rule already: Delaware Supreme Court Rule 71. Admission <i>pro hac vice</i>. http://courts.state.de.us/supreme/rules.htm</p> <p>(4) Conducting review. Do not have a rule.</p> <p>(5) Effective October 11, 2007, the Delaware Supreme Court adopted a foreign legal consultant rule. http://courts.delaware.gov/Rules/?SC-Rule55-2ForeignLegalConsultants.pdf See also Rule 5.5(d).</p> <p>(6) See (1) above: On October 16, 2007 the Delaware Supreme Court amended Rule 5.5(c) so that it now reads: (c) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:</p>
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<p>On August 1, 2006 the District of Columbia Court of Appeals entered an Order amending the Rules of Professional Conduct. The amended rules are effective February 1, 2007. http://www.dcbbar.org/new_rules/index.cfm</p> <p>(1) Rule 5.5 – Unauthorized Practice The provisions concerning those activities in which a lawyer not admitted in the District of Columbia may and may not engage are set forth in Rule 49 of the Rules of the District of Columbia Court of Appeals. Rule 49 is similar to ABA Model Rule 5.5. DC issued UPL Opinion authorizing incidental practice by foreign lawyers.</p> <p>(2) Rule 8.5 – Disciplinary Authority; Choice of Law Rule 8.5 is similar to ABA Model Rule 8.5 but deletes the second sentence of Rule 8.5 (a) and D.C. Rule 8.5 (2) reads: (2) For any other conduct, (i) If the lawyer is licensed to practice only in this jurisdiction, the rules to be applied shall be the rules of this jurisdiction, and (ii) If the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.</p> <p>(3) Not addressed. Have a rule already: Rule 49(c)(7) of the District of Columbia Court of Appeals. Unauthorized Practice of Law. http://www.dcbbar.org/for_lawyers/courts/court_of_appeals/court_rules/title_VI/rule_forty_nine.cfm</p> <p>(4) Not addressed. Have a rule already: D.C. App. Rule 46. http://www.dcbbar.org/for_lawyers/membership/prospective_members/rule46.cfm</p> <p>(5) Not addressed. Have a rule already: DC R A CT Rule 46(c)(4), District of Columbia Court of Appeals, Rule 46(c)(4) (Adopted 1986).</p> <p>(6) On October 15, 2004, the Committee on the Unauthorized Practice of Law of the District of Columbia Court of Appeals issued opinion 14-04 that states a foreign lawyer may engage in the incidental practice of law in the District. http://www.dccourts.gov/dccourts/docs/rule49_opinion14-04.pdf</p>
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<p>FL</p>	<p>On May 12, 2005 the Supreme Court of Florida entered an order adopting amendments to the Rules Regulating the Florida Bar to allow for multijurisdictional practice of law. The amended Rules are effective January 1, 2006. http://www.floridasupremecourt.org/decisions/2005/sc04-135.pdf</p> <p>(1) Rule 4-5.5 Unlicensed Practice of Law, Multijurisdictional Practice of Law Similar to ABA Model Rule 5.5 except does not adopt 5.5 (d)(1) (in-house-counsel provision) and provides for temporary practice by foreign lawyers. However, Rule 1-3.11 of the Rules Regulating The Florida Bar requires out-of-state lawyers to file a statement with The Florida Bar in all domestic arbitration proceedings and pay a \$250 fee. Out-of-state lawyers would be limited to 3 domestic arbitrations in a 365-day period. Lawyers appearing in international arbitrations are exempted from this provision.</p> <p>(2) Rule 3-4.1 Notice and Knowledge of Rules; Jurisdiction Over Attorneys of Other States and Rule 3-4.6 Discipline By Foreign or Federal Jurisdiction; Choice of Law Similar to ABA Model Rule 8.5 except in (b)(2), last sentence is deleted. (Deleted language: <i>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.</i>)</p> <p>(3) Rule 1-3.10. Amendment to existing <i>pro hac</i> admission rule (3 appearances per year, \$250 fee to Bar and file a uniform motion for admission.) Rule 1-3.11 applies to arbitration proceedings.</p> <p>(4) Declined to adopt ABA Model Rule on Admission by Motion. Must take bar examination to be admitted.</p> <p>(5) Declined to adopt ABA Model Rule for the Licensing of Legal Consultants. Have a rule already: F.S.A. Bar Rule 16-1.5, Rules Regulating The Florida Bar, Chapter 16, Foreign Legal Consultancy Rule (Added July 23, 1992, effective Jan. 1, 1993).</p> <p>(6) Rule 4-5.5(d) Authorized Temporary Practice by Lawyer Admitted in a Non-United States Jurisdiction. Similar to ABA Model Rule on Temporary Practice by Foreign Lawyers.</p>
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<p>GA</p>	<p>On June 8, 2004 the Georgia Supreme Court adopted new MJP Rules: (1) Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law Similar to ABA Model Rule 5.5 but distinguishes between “Domestic” and “Foreign” lawyers but allows both to engage in the temporary practice of law. (2) Rule 8.5: Disciplinary Authority; Choice of Law Similar to ABA Model Rule 8.5. Applies to both “Domestic” and “Foreign” lawyers. (3) On October 5, 2005 the Georgia Supreme Court amended the <i>pro hac vice</i> admission rule. Uniform Superior Court Rule 4.4. \$200 filing fee and verified application required, effective November 10, 2005. http://www.gasupreme.us/amended_rules/Unif_sup_%204.4_%204.11.pdf (4) Declined to adopt. Court amended its admission rules on December 12, 2002 to allow admission by motion. (Reciprocity and fee required). (Approved by Bar on April 5, 2003) (5) Adopted equivalent of ABA <i>Model Rule for the Licensing of Legal Consultants</i>. Georgia Supreme Court Rules Governing Admission to the Practice of Law in Georgia, Part E (Effective September 3, 2004). Fee: \$1000; renewal \$100. http://www2.state.ga.us/Courts/Supreme/pdf/foreign_law_bar_ex_rule.pdf (6) Rule 5.5 adopted by Georgia Supreme Court on June 8, 2004 allows temporary practice of law by “Foreign” lawyers. See #1 above. http://www2.state.ga.us/Courts/Supreme/amended_rules/6_8_2004_order.htm</p>
<p>HI</p>	<p>Disciplinary Board of Supreme Court Ethics 2000 Committee conducting review.</p>

ID	<p>On March 15, 2004, the Idaho Supreme Court amended the Rules of Professional Conduct, effective July 1, 2004. http://www.isc.idaho.gov/irpc0304_ord.htm</p> <p>(1) Rule 5.5: Unauthorized Practice of Law Similar to ABA Model Rule 5.5. Only 4 exceptions: preparing for potential proceeding in which the lawyer expects to be admitted, employee of client, acts with respect to a matter that arises out of or is reasonably related to the lawyer's representation of a client in a jurisdiction in which the lawyer is admitted to practice, or associated with Idaho counsel. Deletes the word "United States" before the word jurisdiction in Rule 5(c).</p> <p>(2) Rule 8.5: Disciplinary Authority; Choice of Law Identical to ABA Model Rule 8.5.</p> <p>(3) Not addressed. Have a rule: Idaho Bar Commission Rule 222. Limited Admission/<i>Pro Hac Vice</i>. http://www2.state.id.us/isb/rules/ibcr/admission_rules.htm</p> <p>(4) Idaho Bar Commission Rule 204A (amended October 2006). Reciprocity required: \$800 application fee. http://www2.state.id.us/isb/adm/Forms/RULE204A.pdf</p> <p>(5) Rule 205A. Foreign Legal Consultants. Idaho Bar Commission Rules Governing Admission to Practice and Membership in the Idaho State Bar (Effective July 1, 2005).</p> <p>(6) Not addressed. Do not have a rule.</p>
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<p>IL</p>	<p>On July 1, 2009, the Illinois Supreme Court adopted amended Rules of Professional Conduct, effective January 1, 2010. Effective July 1, 2004. Rule 716. Limited Admission of House Counsel. http://www.state.il.us/court/SupremeCourt/Rules/MRAmend021104.htm#716</p> <p>(1) Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law Identical to ABA Model Rule 5.5.</p> <p>(2) Rule 8.5: Disciplinary Authority; Choice of Law Identical to ABA Model Rule 8.5.</p> <p>(3) Conducting review. Have a rule: Illinois Supreme Court Rule 707. Foreign Attorneys in Isolated Cases. http://www.state.il.us/court/SupremeCourt/Rules/Art_VII/artvii.htm#Rule707</p> <p>(4) Conducting review. Have a rule: Illinois Supreme Court Rule 705 http://www.state.il.us/court/SupremeCourt/Rules/Art_VII/artvii.htm#Rule%20705</p> <p>(5) Conducting review. Have a rule: Illinois Supreme Court Rules 712 and 713.</p> <p>(6) Conducting review. Do not have a rule.</p> <p>Effective July 1, 2004. Rule 716. Limited Admission of House Counsel. http://www.state.il.us/court/SupremeCourt/Rules/MRAmend021104.htm#716</p>
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<p>IN</p>	<p>On September 30, 2004, the Indiana Supreme Court entered an order amending the Indiana Rules of Professional Conduct, effective January 1, 2005.</p> <p>(1) Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law Identical to ABA Model Rule 5.5 except for an insertion of the following sentence into Comment [4] after the second sentence, <i>"For example, advertising in media specifically targeted to Indiana residents or initiating contact with Indiana residents for solicitation purposes could be viewed as systematic and continuous presence."</i></p> <p>(2) Rule 8.5: Disciplinary Authority; Choice of Law Similar to ABA Model Rule 8.5 except that in (b)(2), last sentence is deleted. (Deleted language: <i>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.</i>)</p> <p>(3) Conducting review. Have a rule: Indiana Rules for Admission and Discipline, Rule 3, Section 2. Limited Admission on Petition. http://www.ai.org/judiciary/rules/ad_dis/index.html#r3</p> <p>(4) Conducting review. Have a rule: Rule 6, Indiana Supreme Court Rules for Admission to the Bar http://www.in.gov/judiciary/rules/ad_dis/index.html#r6</p> <p>(5) Conducting review. Have a rule: Indiana Rules of Court, Rules for Admission to the Bar and the Discipline of Attorneys, Rule 5</p> <p>(6) Conducting review. Do not have a rule.</p>
<p>IA</p>	<p>On April 20, 2005 the Iowa Supreme Court entered an order adopting a new set of Rules of Professional Conduct, effective July 1, 2005.</p> <p>(1) Rule 32.5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law Identical to ABA Model Rule 5.5; requires registration for in-house counsel pursuant to new Iowa Court Rule 31.16. http://www.legis.state.ia.us/Rules/Current/court/courtrules.pdf</p> <p>(2) Rule 32.8.5: Disciplinary Authority; Choice of Law Identical to ABA Model Rule 8.5. http://www.legis.state.ia.us/Rules/Current/court/courtrules.pdf</p> <p>(3) Have a rule: Iowa Rule of Court 31.14. Admission <i>pro hac vice</i> before Iowa courts and administrative agencies. http://www.legis.state.ia.us/Rules/Current/court/courtrules.pdf</p> <p>(4) Rule 31.12 Admission of attorneys from other jurisdictions—requirements and fees (Adopted August 6, 2007:effective immediately) http://www.legis.state.ia.us/Rules/Current/court/courtrules.pdf</p> <p>(5) Rule 31.18 Licensing and practice of foreign legal consultants http://www.legis.state.ia.us/DOCS/ACO/CR/LINC/08-17-2009.CourtOrder.File91.pdf</p> <p>(6) Conducting review. Do not have a rule.</p>

<p>KS</p>	<p>In May 2007 the Kansas Supreme Court adopted the amended Kansas Rules of Professional Conduct. http://www.kscourts.org/ctruls/KRPCnew.pdf</p> <p>1) RULE 5.5 UNAUTHORIZED PRACTICE OF LAW. Same as the old ABA Model Rule 5.5. No provision for the multijurisdictional practice of law.</p> <p>2) RULE 8.5 JURISDICTION “A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.”</p> <p>3) Not addressed. On March 9, 2005, the Kansas Supreme Court entered an Order amending the <i>pro hac vice</i> admission rule, effective July 1, 2005. Fee: \$100 Kansas Supreme Court Rule 1.10, Admission <i>Pro Hac Vice</i> of Out-of-State Attorney. Before the Kansas Appellate Courts. http://www.kscourts.org/ctruls/2005SC25amended.pdf</p> <p>4) Effective July 1, 2005 Admission by Motion. Reciprocity required. \$1250 fee. http://www.kscourts.org/ctruls/2005SC11.pdf</p> <p>5) Not addressed. Do not have a rule.</p> <p>6) Not addressed. Do not have a rule.</p>
<p>KY</p>	<p>Effective July 15, 2009, the Kentucky Supreme Court adopted amended Rules of Professional Conduct.</p> <p>1) SCR 3.130 (5.5) Unauthorized practice of law; multijurisdictional practice of law The Rule is similar to ABA Model Rule 5.5 but deletes paragraph (c)(1)[association with local counsel] and requires that the legal services provided in Kentucky arise out of or be reasonably related to the lawyer's representation of the lawyer's client in the jurisdiction in which the lawyer is admitted.</p> <p>2) SCR 3.130 (8.5) Jurisdiction Disciplinary authority; choice of law The Rule is identical to ABA Model Rule 8.5.</p> <p>3) Not addressed. Have a Rule. Kentucky Supreme Court Rule 3.030. Membership, practice by nonmembers and classes of membership. http://www.kybar.org/documents/scr/scr3/scr_3.030.pdf</p> <p>4) Not addressed. Have a Rule: reciprocity required. Kentucky Supreme Court Rule 2.110(5) http://www.kyoba.org/Rules/SRC/scr2110.html</p> <p>5) Not addressed. Do not have a Rule.</p> <p>6) Not addressed. Do not have a Rule.</p>

<p>LA</p>	<p>On March 9, 2005 the Louisiana Supreme Court adopted amended rules allowing for the multijurisdictional practice of law on a temporary basis under certain circumstances and adopted an in-house counsel registration rule. The rule changes are effective April 1, 2005 and in-house counsel have until July 1, 2005 to register. http://www.lasc.org/rules/orders/2005/ROPC5.5_8.5.pdf http://www.lasc.org/rules/orders/2005/RuleXVII14inhouse.pdf http://www.lasc.org/rules/orders/2005/inhousecounselfee.pdf</p> <p>(1) Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law Similar to ABA Model Rule 5.5 except do not adopt 5.5(d)(1) (in-house-counsel provision) and adds an unrelated provision regarding the employment of disbarred or suspended lawyers as law clerks.</p> <p>(2) Rule 8.5: Disciplinary Authority; Choice of Law Identical to ABA Model Rule 8.5</p> <p>(3) Not addressed. Have a rule: La Sup. Ct. Rule XVII. Admission to the Bar of the State of Louisiana, Section 13. <i>Hac Vice</i> Admission. http://www.lasc.org/rules/supreme/RuleXVII.asp</p> <p>(4) Declined to adopt ABA Model Rule on Admission by Motion. Must take bar examination to be admitted.</p> <p>(5) Not addressed. Have a rule: Louisiana Revised Statutes, Title 37, Professions and Occupations, Chapter 4, Attorneys, Article 14, Section 11.</p> <p>(6) Court is conducting review. Do not have a rule.</p>
<p>ME</p>	<p>Maine has adopted Rules of Professional Conduct based on the ABA Model Rules of Professional Conduct, effective August 1, 2009. http://tinyurl.com/cxf3n7</p> <p>1) Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law Similar to ABA Model Rule 5.5. Maine Rule 5.5 (c) has a limitation: A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from the practice of law in any jurisdiction, may provide legal service THAT ARISE OUT OF OR ARE REASONABLY RELATED TO THE REPRESENTATION OF AN EXISTING CLIENT on a temporary basis in this jurisdiction that . . .</p> <p>2) Rule 8.5 Disciplinary Authority; Choice of Law Identical to ABA Model Rule 8.5.</p> <p>3) No review. Have a Rule: Maine Revised Statutes, Title 4, Section 802. Attorneys from other states. http://janus.state.me.us/legis/statutes/4/title4sec802.html</p> <p>4) Effective July 1, 2005, reciprocal admission allowed for members of the bars of New Hampshire and Vermont. http://www.courts.state.me.us/rules_forms_fees/rules/MBarAdmRules7-05.htm#RULE5APPLICATION</p> <p>5) No review. Do not have a Rule.</p> <p>6) No review. Do not have a Rule.</p>

<p>MD</p>	<p>On February 8, 2005 the Maryland Court of Appeals adopted revisions to Rule 5.5 and 8.5 of the Maryland Lawyers' Rules of Professional Conduct, effective July 1, 2005. http://www.courts.state.md.us/rules/153ro.pdf</p> <p>(1) Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law Identical to ABA Model Rule 5.5 with changes in the Comments.</p> <p>(2) Rule 8.5: Disciplinary Authority; Choice of Law Similar to ABA Model Rule 8.5. Adds to 8.5 (a): "(ii) holds himself or herself out as practicing law in this State, or (iii) has an obligation to supervise or control another lawyer practicing law in this State whose conduct constitutes a violation of these Rules. Cross reference: Md. Rule 16-701(a)." In Comment [1], deletes reference to <i>ABA Model Rules for Lawyer Disciplinary Enforcement</i> and deletes the last sentence. In Comment [4], changes the end of the first sentence to "shall be subject only to the rules of professional conduct of that tribunal."</p> <p>(3) No review pending. Have a Rule: Rules of the Maryland Court of Appeals Governing Admission to the Bar of Maryland, Rule 14. http://198.187.128.12/maryland/lpext.dll?f=templates&fn=fs-main.htm&2.0</p> <p>(4) No review pending. Do not have a rule.</p> <p>(5) No review pending. Do not have a rule.</p> <p>(6) No review pending. Do not have a rule.</p>
<p>MA</p>	<p>Effective January 1, 2007, the Massachusetts Supreme Judicial Court adopted Rules 5.5 and 8.5.</p> <p>1) Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law Identical to ABA Model Rule 5.5</p> <p>2) Rule 8.5 Disciplinary Authority An amended Rule 8.5 has been proposed. http://www.mass.gov/courts/sjc/prop-rev-prof-cond-8-5.html</p> <p>3) No review. Have a Rule: Chapter 221 of the General Laws of Massachusetts, § 46A. Practice of law; persons authorized. http://www.state.ma.us/legis/laws/mgl/221%2D46a.htm</p> <p>4) No review. Have a Rule: Ethical Requirements and Rules Concerning the Practice of Law of the Supreme Judicial Court of Massachusetts, Rule 3:01, Section 6.1. http://www.state.ma.us/bbe/BarAppRulesAug2002.pdf</p> <p>5) No review. Have a Rule: Ethical Requirements and Rules Concerning the Practice of Law of the Supreme Judicial Court of Massachusetts, Rule 3:05.</p> <p>6) No review.</p>

<p>MI</p>	<p>Proposed amended Rules of Professional Conduct were published for comment by the Michigan Supreme Court in July, 2004. The comment period was closed in June 2005 and the Court included the proposed rules on the agenda of its public administrative hearings on September 29, 2005. The proposal is on the Court's website at: http://courts.michigan.gov/supremecourt/Resources/Administrative/2003-62.pdf</p> <p>(1) Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law Proposed Rule 5.5 is identical to ABA Model Rule 5.5.</p> <p>(2) Rule 8.5: Disciplinary Authority; Choice of Law Proposed Rule 8.5 is identical to ABA Model Rule 8.5.</p> <p>(3) Conducting review. Have a rule: Michigan Supreme Court Rules Concerning the State Bar of Michigan, Rule 15, Section 2. Foreign Attorneys, Temporary Permission. http://courtofappeals.mijud.net/rules/public/default.asp</p> <p>(4) Conducting review. Have a rule: Michigan Compiled Law §600.946.</p> <p>(5) Conducting review. Have a rule: Michigan Board of Bar Examiners, Rule 5E.</p> <p>(6) Conducting review. Do not have a rule.</p>
<p>MN</p>	<p>On June 17, 2005, the Minnesota Supreme Court adopted amendments to the Rules of Professional Conduct, effective October 1, 2005. http://www.courts.state.mn.us/news/posting.aspx?ID=20309&pageID=131</p> <p>(1) Rule 5.5: Unauthorized Practice of Law; Multi-Jurisdictional Practice Similar to ABA Model Rule 5.5 except: 1) add to 5.5(a) the words "except that a lawyer admitted to practice in Minnesota does not violate this Rule by conduct in another jurisdiction that is permitted in Minnesota under Rule 5.5(c) or (d) for lawyers not admitted to practice in Minnesota"; and 2) does not adopt 5.5(d)(1) (in-house-counsel provision).</p> <p>(2) Rule 8.5: Disciplinary Authority; Choice of Law Identical to ABA Model Rule 8.5.</p> <p>(3) Conducting review. Have a rule: Minnesota Statutes § 481.02, Subd. 6. Attorneys of other states. http://www.revisor.leg.state.mn.us/stats/481/02.html</p> <p>(4) Conducting review. Have a rule: Minnesota Supreme Court Rules for Admission to the Bar, Rule 7 http://www.ble.state.mn.us/rules.htm#Rule7</p> <p>(5) Conducting review. Have a rule: 52 M.S.A., Admission to the Bar Rule 11. http://www.ble.state.mn.us/rules.html#Rule11</p> <p>(6) Conducting review. Do not have a rule.</p>

MS	<p>On November 28, 2007 the Special Panel on Rules Governing Admission to the Mississippi Bar submitted a Report and Recommendations to the Mississippi Supreme Court. The Report recommended the following:</p> <p>(1) Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice Proposed Rule 5.5 is identical to ABA Model Rule 5.5.</p> <p>(2) Rule 8.5: Disciplinary Authority; Choice of Law Proposed Rule 8.5 is identical to ABA Model Rule 8.5.</p> <p>(3) Have a rule: Mississippi Rule of Appellate Procedure 46(b). Admission of Foreign Attorneys <i>Pro Hac Vice</i>. http://www.mssc.state.ms.us/rules/RuleText.asp?RuleTitle=RULE+46.+ADMISSION,+WITHDRAWAL,+AND+DISCIPLINE+OF+ATTORNEYS&IDNum=5</p> <p>(4) Rule VI of the Rules Governing Admission to the Mississippi Bar to permit admission without a special written attorney of experienced attorneys from other states with 5 or more years of active practice. http://www.mssc.state.ms.us/rules/msrulesofcourt/rules_admission_msbar.pdf</p> <p>(5) The Report recommends the adoption of a FLC Rule essentially similar to the ABA Model Rule.</p> <p>(6) The Report recommends the adoption of the ABA Model Rule on Temporary Practice by Foreign Lawyers.</p> <p>Effective September 1, 2003, Rule 8.5 of the Mississippi Rules of Professional Conduct is amended. http://www.mssc.state.ms.us/news/sn104819.pdf</p>
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<p>MO</p>	<p>On March 9, 2005 the Missouri Supreme Court entered an Order amended Missouri Rules 4-5.5 and 4-8.5, effective January 1, 2006. http://www.courts.mo.gov/sup/index.nsf/d45a7635d4bfdb8f8625662000632638/a1a5ae5d76d936e586256fc200026b38?OpenDocument</p> <p>(1) Rule 4-5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law Similar to ABA Model Rule 5.5 but makes clear that in-house counsel can only practice temporarily in Missouri unless they become comply with the in-house counsel limited license rule. Also deletes ABA Model Rule 5.5 (d)(2) involving federal law but is covered in Comment [4] of Missouri Rule 5.5.</p> <p>(2) Rule 4-8.5: Disciplinary Authority; Choice of Law Identical to ABA Model Rule 8.5.</p> <p>(3) Not addressed. Have a rule: Missouri Supreme Court Rules Governing the Missouri Bar and the Judiciary. Rule 9.03. Visiting Attorney Appearing in a Particular Case. http://www.osca.state.mo.us/sup/index.nsf/d45a7635d4bfdb8f8625662000632638/1955018e9e8be48d86256e6800584b19?OpenDocument</p> <p>(4) Not addressed. Have a rule: Missouri Supreme Court Rules Governing the Missouri Bar, Rule 8.10 http://www.courtrules.org/</p> <p>(5) Not addressed. Have a rule: MO R BAR Rule 9.05-9.12, Foreign Legal Consultants (Adopted March 3, 1994, effective July 1, 1994).</p> <p>(6) Not addressed. Do not have a rule.</p>
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<p>MT</p>	<p>The Supreme Court of Montana decided not to adopt an amended Rule 5.5 at this time.</p> <p>(1) Rule 5.5: Unauthorized Practice of Law Same as former ABA Model Rule 5.5.</p> <p>(2) Rule 8.5: Disciplinary Authority; Choice of Law On July 5, 2005 the Court entered an order amending Rule 8.5. The rule is similar to ABA Model Rule 8.5 but does not contain the choice of law provision from ABA Model Rule 8.5(b). The rule also requires lawyers who are not active members of the State Bar of Montana, when applying for <i>pro hac vice</i> admission, to certify in writing and under oath to the Court that they will be bound by the Rules of Professional Conduct and be subject to the disciplinary authority. http://www.lawlibrary.state.mt.us/dscgi/ds.py/Get/File-42835/rulerevisionord.pdf</p> <p>(3) and (4) On July 7, 2004, the Supreme Court of Montana denied a petition filed by the State Bar to revise to the rules for admission to: (1) allow admission of ten-year practitioners by motion under certain conditions; (2) allow admission of five-year practitioners from several neighboring states under the constraints of a reciprocity agreement; and (3) revise the <i>pro hac vice</i> rule to increase the allowable number of appearances by out-of-state counsel. http://www.lawlibrary.state.mt.us/dscgi/ds.py/Get/File-32797/03-861.doc</p> <p>(5) Conducting review. Do not have a rule.</p> <p>(6) Conducting review. Do not have a rule.</p>
<p>NE</p>	<p>On June 8, 2005 the Nebraska Supreme Court entered an order adopting the Nebraska Rules of Professional Conduct, effective September 1, 2005. http://court.nol.org/rules/amendments/Order.htm</p> <p>(1) Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law Identical to ABA Model Rule 5.5.</p> <p>(2) Rule 8.5: Disciplinary Authority; Choice of Law Identical to ABA Model Rule 8.5.</p> <p>(3) Not addressed. Have a rule: Nebraska Supreme Court Rules. Admission of Attorneys. Rule 6. Admission, <i>Pro Hac Vice</i>, of Lawyers of Good Moral Character Who Are Admitted to Practice in Another State, the District of Columbia, or a Territory. http://court.nol.org/rules/attymadm_02.htm</p> <p>(4) Not addressed. Have a rule: Rule 5, Nebraska Supreme Court Admission Rules for Attorneys http://court.nol.org/rules/attymadm_02.htm</p> <p>(5) Not addressed. Do not have a rule.</p> <p>(6) Not addressed. Do not have a rule.</p>

NV	<p>(1) Rule 5.5 and 5.5A. Unauthorized Practice of Law. (formerly Supreme Court Rule 189) addresses the same subject matter as ABA Model Rule 5.5, but the text is different. (Effective May 1, 2006). Rule 5.5 states that the rule applies to a lawyer who is not admitted in Nevada, but who is admitted and in good standing in another jurisdiction of the United States, and who provides legal services for a Nevada client in connection with transactional or extra-judicial matters that are pending in or substantially related to Nevada. Rule 5.5A(c) requires out-of-state lawyers to register in Nevada, pay a \$150 fee, and file an annual report. The annual report requires, among other information, “the nature of the client(s) (individual or business entity) for whom the lawyer has provided services that are subject to this rule and the number and general nature of the transactions performed for each client during the previous twelve (12)-month period. The lawyer shall not disclose the identity of any clients or any information that is confidential or subject to attorney-client privilege”.</p> <p>New Rule 7.5A requires “multijurisdictional law firms”—those that have offices in Nevada and in at least one other jurisdiction—to register with the state bar and pay an annual \$500 fee. New Rule 49.10 requires out-of-state lawyers who serve as in-house counsel or who are employed by a governmental agency to register and pay an annual \$150 fee. http://www.leg.state.nv.us/CourtRules/RPC.html</p> <p>(2) Rule 8.5 Jurisdiction Similar to ABA Model Rule 8.5 but only includes the first sentence of ABA Model Rule 8.5. http://www.leg.state.nv.us/CourtRules/RPC.html</p> <p>(3) The Nevada <i>Pro Hac Vice Rule</i>, SCR 42, has been amended. The Rule now covers all arbitration, mediation or alternative dispute resolution procedures that are court-annexed or court ordered. Additionally, it is presumed, absent a showing of good cause, that more than five appearances in a three-year period is excessive.</p> <p>(4) Not addressed. Do not have a rule.</p> <p>(5) Not addressed. Do not have a rule.</p> <p>(6) Not addressed. Do not have a rule.</p>
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<p>NH</p> <p>(1) Rule 5.5: Unauthorized Practice Of Law; Multijurisdictional Practice Of Law. Rule 5.5 is identical to ABA Model Rule 5.5. http://www.courts.state.nh.us/supreme/orders/20072507.pdf</p> <p>(2) Rule 8.5. Disciplinary Authority; Choice of Law; Application of Rules to Nonlawyer Representatives. Rule 8.5 is identical to ABA Model Rule 8.5 but includes the following paragraph: (c) <i>Application of Rules to Nonlawyer Representatives.</i> Rules 1.2, 1.3, 1.4, 1.14, 1.15, 3.1, 3.2, 3.3, 3.4, 3.5, 4.1, 4.2, 4.3, 4.4, 8.2(a), and 8.4 of the Rules of Professional Conduct shall apply to persons who, while not lawyers, are permitted to represent other persons before the courts of this jurisdiction pursuant to RSA 311:1. The committee on professional conduct shall have jurisdiction to consider grievances alleging violations of these Rules of Professional Conduct by nonlawyer representatives. http://www.courts.state.nh.us/supreme/orders/20072507.pdf</p> <p>(3) Not addressed. Have a rule: Rules of the Supreme Court of the State of New Hampshire. Rule 33(1). Nonmember of the New Hampshire Bar. http://www.courts.state.nh.us/rules/scr/scr-33.htm</p> <p>(4) Admission on Motion Rule adopted, effective March 1, 2003. (Amended Rule 42) http://www.nhbar.org/about_text.asp?SectID=2&C=273</p> <p>(5) Advisory Committee on Rules studying the issues.</p> <p>(6) On January 18, 2007, the New Hampshire Supreme Court adopted a rule allowing the temporary practice of law by foreign lawyers. www.courts.state.nh.us/supreme/orders/ord20070118.pdf</p>

<p>NJ</p>	<p>(1) RPC 5.5 Lawyers Not Admitted to the Bar of this State and the Lawful Practice of Law (Effective January 1, 2004) Similar to ABA Model Rule 5.5 except does not contain the word “temporary” when describing permissible MJP legal services; adds requirement that the legal work in NJ be “with respect to a matter where the practice activity arises directly out of the lawyer’s representation on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice, provided that such practice in this jurisdiction is occasional and is undertaken only when the lawyer’s disengagement would result in substantial inefficiency, impracticality or detriment to the client”. Also adopted an in-house counsel rule, R.1:27 (Admission to Practice). Effective September 1, 2004, out-of-state lawyers must register and pay fee pursuant to R. 1:20-1(b) and (c), R. 1:28-2, and R. 1:28B-1(e) during the period of practice. http://www.judiciary.state.nj.us/rules/apprpc.htm</p> <p>(2) RPC 8.5 Disciplinary Authority; Choice of Law (Effective January 1, 2004) Similar to ABA Model Rule 8.5 except in (b)(2) does not include last sentence.</p> <p>(3) Not addressed. Have a rule: Rules Governing the Courts of State of New Jersey. Rule 1.21-2. Appearances <i>Pro Hac Vice</i>. http://www.judiciary.state.nj.us/rules/r1-21.htm</p> <p>(4) Declined to adopt ABA Model Rule on Admission by Motion. Do not have a rule.</p> <p>(5) Not addressed. Have a rule: NJ R Gen Application R. 1:21-9, Certification and Practice of Foreign Legal Consultants.</p> <p>(6) Not addressed. Do not have a rule. http://www.judiciary.state.nj.us/notices/reports/admin-deter-rpcs.pdf</p>
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NM	<p>On August 13, 2003 the New Mexico Supreme Court entered an order adopting new Rule 16-505 and 16-805, effective September 1, 2003.</p> <p>(1) 16-505. Unauthorized practice of law; multijurisdictional practice of law. Similar to ABA Model Rule 5.5 but adds language prohibiting the employment of a disbarred or suspended lawyer. Disbarred or suspended lawyers may not be employed as law clerks if prohibited from accepting employment by order of the Supreme Court or the Disciplinary Board. In addition, in transactions involving issues specific to New Mexico law, the lawyer temporarily practicing in New Mexico shall associate with counsel admitted to practice in New Mexico.</p> <p>(2) 16-805. Disciplinary authority. New Mexico rule is similar to ABA Model Rule 8.5 but deletes ABA Model Rule 8.5(b) (Choice of Law).</p> <p>(3) The New Mexico Supreme Court has established a new <i>pro hac vice</i> admission rule for cases filed on or after January 20, 2005. NMRA 24-106. Practice by non-admitted lawyers before state courts. (Includes lawyers admitted in another country). Fee: \$250 http://www.nmbar.org/Template.cfm?Section=Rule_24-106_NMRA</p> <p>(4) Not addressed. Do not have a rule.</p> <p>(5) Not addressed. Have a rule: Rule 26-101. Certificate of Registration as a Foreign Legal Consultant; Applicant Qualifications</p> <p>(6) Not addressed. Do not have a rule. But see (3) above.</p> <p>In discussions with Arizona, Colorado and Utah about reciprocity admission compact.</p>
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<p>NY</p>	<p>On December 16, 2008, the New York Court of Appeals adopted new Rules of Professional Conduct, effective April 1, 2009. http://www.nycourts.gov/rules/jointappellate/</p> <p>(1) Rule 5.5: Unauthorized Practice of Law Same as old ABA Model Rule 5.5; does not address multijurisdictional practice of law.</p> <p>(2) Rule 8.5: Disciplinary Authority And Choice Of Law Similar to ABA Model Rule 8.5.</p> <p>(3) Conducting review. Have a rule: NYCRR § 520.11. Admission <i>Pro Hac Vice</i>. http://www.courts.state.ny.us/ctapps/520rules.htm#11</p> <p>(4) Conducting review. NYCRR § 520.10 (Admission Without Examination) http://www.courts.state.ny.us/ctapps/520rules.htm#10</p> <p>(5) ABA Model Rule based upon NY Rule. Rules of the Court of Appeals for the Licensing of Legal Consultants, Part 521. NY R A CT § 521.1</p> <p>(6) Conducting review. Do not have a rule.</p>
<p>NC</p>	<p>Supreme Court has adopted new Rules 5.5 and 8.5.</p> <p>(1) Rule 5.5: Unauthorized Practice of Law Similar to ABA Model Rule 5.5 (Effective March 1, 2003). Does not contain the word “temporary” when describing permissible MJP legal services; adds requirement that the legal work in NC be "with respect to a matter that arises out of or is otherwise reasonably related to the lawyer's representation of a client in a jurisdiction in which the lawyer is admitted to practice" and adds an unrelated provision regarding the employment of disbarred or suspended lawyers as law clerks. http://www.ncbar.com/home/line_rules.asp.</p> <p>(2) Rule 8.5: Disciplinary Authority; Choice of Law Similar to ABA Model Rule 8.5 (Effective March 1, 2003). Uses “render” rather than “provide” and Comment [1] only includes first two sentences. http://www.ncbar.com/home/line_rules.asp.</p> <p>(3) Did not study and no plans to do so. Have a rule: NCGS. § 84-4.1. Limited practice of out-of-state attorneys. http://www.ncga.state.nc.us/Statutes/GeneralStatutes/HTML/BySection/Chapter_84/GS_84-4.1.html</p> <p>(4) Did not study and no plans to do so. Have a rule: North Carolina Supreme Court Rules Governing Admission to the Practice of Law, Section .0502 http://www.ncble.org/ (Reciprocity required and \$1500 application fee).</p> <p>(5) Did not study and no plans to do so. Have a rule: NC ST § 84A-1, et seq.</p> <p>(6) Did not study and no plans to do so. Do not have a rule.</p>

ND	<p>On November 17, 2004, the North Dakota Supreme Court entered an order adopting amendments to North Dakota Rules of Professional Conduct 5.5 and 8.5 and North Dakota Admission to Practice Rule 3. http://www.ndcourts.com/Court/Notices/Notices.htm</p> <p>(1) Rule 5.5: Unauthorized Practice of Law Similar to ABA Model Rule 5.5. but requires in-house counsel who establishes an office or other permanent presence to comply with registration rules. Also requires association with a ND lawyer for transactions that are pending in or substantially related to ND for which <i>pro hac vice</i> admission is not available.</p> <p>(2) Rule 8.5: Jurisdiction Similar to ABA Model Rule 8.5 (a) but deletes ABA Model Rule 8.5 (b).</p> <p>(3) Admission to Practice Rule 3. Pro Hac Vice Admission and Registration of Nonresident Attorneys. Similar to ABA Model Rule on Pro Hac Vice Admission. Also provides for the registration of in-house counsel.</p> <p>(4) Not addressed. Have a rule: North Dakota Admission to Practice Rule 6. http://www.court.state.nd.us/Rules/Admission/frameset.htm</p> <p>(5) North Dakota Supreme Court Rules on Admission, Rule 4. Licensing and Practice of Foreign Legal Consultants (Effective March 1, 2007) http://www.court.state.nd.us/rules/admission/frameset.htm</p> <p>(6) Not addressed. Being studied separately by Attorney Standards Committee.</p>
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<p>OH</p> <p>On August 1, 2006 the Ohio Supreme Court entered an Order adopting new Rules of Professional Conduct, effective February 1, 2007. http://www.sconet.state.oh.us/Atty-Svcs/ProfConduct/default.asp</p> <p>(1) Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law Similar to ABA Model Rule 5.5: Rule 5.5 (c)(4) states that a lawyer may engage in negotiations, investigations, or other nonlitigation activities that arise out of or are <u>reasonably</u> related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. Substitute a reference to the corporate registration requirement of Gov. Bar R. VI, Section 4 for the more general language used in the Model Rule. Comment [16] is stricken and Comment [17] is modified to conform to the change in division (d)(1). The Task Force recommends a modification to Comment [4] to warn lawyers that advertising or solicitation of Ohio residents may be considered a “systematic and continuous” presence, as that term is used in division (b).</p> <p>(2) Rule 8.5: Disciplinary Authority; Choice of Law Substantially identical to ABA Model Rule 8.5.</p> <p>(3) Rules for the Government of the Bar of Ohio, Rule XII. Effective January 1, 2011. http://www.supremecourt.ohio.gov/RuleAmendments/Archive.aspx</p> <p>(4) Conducting review. Have a rule: Rules of the Government of the Bar of Ohio, Rule I, Section 9 http://www.sconet.state.oh.us/Rules/govbar/#rulei</p> <p>(5) Conducting review. Have a rule: Rules of the Government of the Bar of Ohio, Rule XI (Effective January 1, 1989).</p> <p>(6) Conducting review. Do not have a rule.</p>
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<p>OK</p>	<p>On April 17, 2007 the Oklahoma Supreme Court entered an Order amending the Oklahoma Rules of Professional Conduct, effective January 1, 2008. http://www.oscn.net/applications/oscn/deliverdocument.asp?cite=2007+ok+22</p> <p>1) Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law Similar to ABA Model Rule 5.5 but adds to Rule 5.5 (c) the following prefatory words “Subject to the provisions of 5.5(a)” and changes Rule 5.5(d)(1) to read: are provided to the lawyer’s employer or its organizational affiliates in connection with the employer’s matters, provided the employer does not render legal services to third persons and are not services for which the forum requires <i>pro hac vice</i> admission;</p> <p>2) Rule 8.5 Disciplinary Authority; Choice of Law Identical to ABA Model Rule 8.5.</p> <p>3) The Oklahoma <i>pro hac vice</i> admission rule was amended to require registration and the payment of a \$350 fee. Oklahoma Supreme Court Rules Creating and Controlling the Oklahoma Bar, Article II, Section 5. Out-of-State Attorneys. http://www.okbar.org/out_of_state/Rules.htm</p> <p>4) Not addressed. Have a Rule: Oklahoma Rules Governing Admission to the Practice of Law, Rule 2 http://www.okbar.org/publicinfo/admissions/rules.htm Fee: \$1500</p> <p>5) Not addressed. Do not have a Rule</p> <p>6) Not addressed. Do not have a Rule.</p>
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<p>OR</p>	<p>On October 27, 2004, the Oregon Supreme Court adopted new Rule of Professional Conduct, effective January 1, 2005. http://www.osbar.org/docs/rulesregs/orpc.pdf (1) Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law Identical in substance to ABA Model Rule 5.5. (2) Rule 8.5: Disciplinary Authority; Choice of Law Identical to ABA Model Rule 8.5. (3) Conducting review. Have a rule: Oregon Revised Statutes, 9.241. Appearance by attorneys licensed in other jurisdictions. http://www.osbar.org/2practice/rulesregs/orsSched9.htm (4) 15.05 Admission of Attorneys Licensed to Practice Law in other Jurisdictions On December 2, 2009, the Oregon Supreme Court amended its admission by motion rule, effective January 1, 2010. The amended rule expands the number of jurisdictions from which lawyers may seek admission to the Oregon Bar and expands the jurisdictions in which Oregon lawyers may be admitted. http://www.osbar.org/admissions/admissiononmotion.html Amended Rule: http://www.osbar.org/docs/admissions/15.05FINAL.pdf (5) Conducting review. Have a rule: ORS 9.242 and Oregon Admission Rule 12.05 (6) Conducting review. Do not have a rule.</p>
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<p>PA</p> <p>On April 30, 2004, the Supreme Court of Pennsylvania amended Rules 5.5 and 8.5 of the Pennsylvania Rules of Professional Conduct. http://www.aopc.org/OpPosting/Supreme/out/28drd-1.pdf http://www.aopc.org/OpPosting/Supreme/out/28drd-1attach.pdf</p> <p>On March 17, 2005, the PA Supreme Court issued an order revising Rule 5.5 in order to delete the safe harbor for foreign corporate counsel. The order and rule changes are located at: http://www.courts.state.pa.us/OpPosting/Supreme/out/39drd.1.pdf and http://www.courts.state.pa.us/OpPosting/Supreme/out/39drd.1attach.pdf.</p> <p>Pennsylvania Rule 5.5 continues to allow temporary practice by foreign lawyers. It no longer allows permanent practice by foreign corporate counsel.</p> <p>(1) Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law Similar to ABA Model Rule 5.5. Allows lawyers admitted in a foreign jurisdiction to practice on a temporary basis in PA.</p> <p>(2) Rule 8.5: Disciplinary Authority; Choice of Law Identical to ABA Model Rule 8.5</p> <p>(3) Amended Pennsylvania Rules of Court, Rule 301 of the Pennsylvania Bar Admission Rules. http://www.aopc.org/OpPosting/Supreme/out/418spct.1attach.pdf. Effective September 2007. “An attorney who is not admitted to the bar of the Commonwealth of Pennsylvania, but is admitted to the bar of and authorized to practice law in the highest court of another state <i>or foreign jurisdiction.</i>”</p> <p>(4) Have a rule: Pa.B.A.R., Rule 204, 42 Pa.C.S.A., Pennsylvania Bar Admission Rule 204. http://www.pabarexam.org/Admission_Rules/rules_and_regulations/204.htm</p> <p>(5) Have a Rule. Adopted FLC Rule in March 2005. Rule 341, et seq., effective September 1, 2005. http://www.courts.state.pa.us/opposting/supreme/out/361spct.1attach.pdf</p> <p>(6) Have a Rule. Rule 5.5 of the Pennsylvania Rules of Professional Conduct, amended on April 30, 2004, allow lawyers admitted in foreign jurisdiction to practice on a temporary basis in PA.</p>
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RI	<p>On February 16, 2007 the Rhode Island Supreme Court entered an order adopting Rules 5.5 and 8.5 allowing the multijurisdictional practice of law. Rules 5.5 and 8.5 are identical to ABA Model Rules 5.5 and 8.5 and are effective April 15, 2007.</p> <p>http://www.courts.state.ri.us/Supreme/pdf-files/Rules_Of_Professional_Conduct.pdf</p> <p>(1) Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law</p> <p>(2) Rule 8.5: Disciplinary Authority; Choice of Law</p> <p>(3) Not addressed. Have a Rule. Rhode Island Supreme Court Rules, Article II, Rule 9. Nonresident attorneys - Senior law students. http://www.courts.state.ri.us/supreme/pdf-files/amendment-rule9.pdf</p> <p>(4) Not addressed. Have a Rule. Must take essay portion of Rhode Island Bar examination. Article II, Rule 2, Rules of the Rhode Island Supreme Court. http://www.courts.state.ri.us/supreme/bar/rules.pdf</p> <p>(5) Not addressed. Do not have a Rule.</p> <p>(6) Not addressed. Do not have a Rule.</p>
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SC	<p>The Supreme Court of South Carolina adopted numerous amendments to the current Rules of Professional Conduct contained in Rule 407 of the South Carolina Appellate Court Rules, effective October 1, 2005.</p> <p>(1) Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law Rule similar to ABA Model Rule 5.5. In Rule 5.5 (c) (4), the words “representation of an existing client” are substituted for “lawyer’s practice.” South Carolina Appellate Court Rule 404 applies to arbitration, mediation and other alternative dispute resolution proceedings.</p> <p>For each matter in which a lawyer seeks to provide legal services pursuant to Rule 5.5(c)(3), the lawyer shall file a verified statement with the South Carolina Supreme Court Office of Bar Admissions stating that the lawyer has not filed more than three statements pursuant to this rule in a 365-day period. The statement shall be accompanied by a \$250 fee and shall be served on opposing counsel, if known. If opposing counsel is not known at the time the verified statement is filed, the statement shall be filed on opposing counsel within ten days of learning the identity of opposing counsel.</p> <p><i>See</i>, (3) below.</p> <p>(2) Rule 8.5: Disciplinary Authority; Choice of Law Rule similar to ABA Model Rule 8.5 but adds new paragraph (c) and corresponding Comment [8] to address lawyers doing business in fields other than law.</p> <p>(3) Amended South Carolina Appellate Court Rules, Rule 404, Admission <i>Pro Hac Vice</i>. Requires application and \$250 fee and applies to arbitration, mediation and other alternative dispute resolution proceedings. http://www.judicial.state.sc.us/courtReg/newrules/Rule404.htm</p> <p>(4) Conducting review. Do not have a rule.</p> <p>(5) The Supreme Court of South Carolina has adopted a foreign legal consultant rule, effective November 2, 2006. Appellate Court Rules. Section IV. Rules Governing the Practice of Law Rule 424, Licensing of Foreign Legal Consultants. Fee: \$500 application and pay bar dues. http://www.sccourts.org/courtReg/displayRule.cfm?ruleID=424.0&subRuleID=&ruleType=APP</p> <p>(6) Conducting review. Do not have a rule.</p>
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<p>SD</p>	<p>On September 29, 2003, the South Dakota Supreme Court approved new versions of Rules 5.5 and 8.5, effective January 1, 2004, and an admission on motion rule (with reciprocity). http://www.sdbar.org/members/Default.htm (Scroll down for the link.)</p> <p>(1) Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law Similar to ABA Model Rule 5.5. Adds as (c)(5): in all cases, the lawyer obtains a South Dakota sales tax license and tenders the applicable taxes pursuant to Chapter 10-45 and adds at the end of (d)(2): “, provided that the lawyer obtains a South Dakota sales tax license and tenders the applicable taxes pursuant to Chapter 10-45”.</p> <p>(2) Rule 8.5: Disciplinary Authority; Choice of Law Identical to ABA Model Rule 8.5.</p> <p>(3) Conducting review. Have a rule: South Dakota Code, Section 16-18-2. Appearance by nonresident attorneys permitted. http://legis.state.sd.us/statutes/Index.cfm?FuseAction=DisplayStatute&FindType=Statute&txtStatute=16-18-2</p> <p>(4) On September 29, 2003 the Court adopted an Admission by Motion Rule, effective January 1, 2004. SDCL 16-16-12.1 and 2</p> <p>(5) Conducting review. Do not have a rule.</p> <p>(6) Conducting review. Do not have a rule.</p>
<p>TN</p>	<p>On October 23, 2009 the Supreme Court of Tennessee entered an order adopting amended Rules 5.5 and 8.5 that are similar to ABA Model Rules 5.5 and 8.5, effective January 1, 2010. http://www.tsc.state.tn.us/OPINIONS/TSC/RULES/2009/Order%20Amending%20TSCRs%207%208%209%2025%2047.pdf</p> <p>1) Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law. Similar to ABA Model Rule 5.5. TN Rule 5.5 (c) (3) and (4) only allows temporary practice that is reasonably related to the representation of a client in a jurisdiction where the lawyer is licensed. TN Rule 5.5 (e) allows pro bono work for in-house counsel.</p> <p>2) Rule 8.5. Disciplinary Authority; Choice of Law. Similar to ABA Model Rule 8.5 but deletes the last sentence in (b)(2) of the ABA Model Rule.</p> <p>3) Tennessee Supreme Court revised its <i>pro hac vice</i> rule, but not closely following the ABA model. Amended <i>pro hac vice</i> admission rule, effective October 1, 2004.</p> <p>4) Not addressed. Have a Rule: Tennessee Supreme Court Rules, Rule 7, Article I, Section 1.04 and Article V, Section 5.01. http://www.tsc.state.tn.us/</p> <p>5) Not addressed. Do not have a Rule.</p> <p>6) Not addressed. Do not have a Rule.</p>

<p>TX</p>	<p>1) and 2) State Bar Disciplinary Rules of Professional Conduct Committee conducting review. 3) Effective September 1, 2003, §82.0361 of subchapter B of chapter 82 of the Texas Government Code, was amended to establish a <i>pro hac vice</i> fee of \$250 for out-of-state lawyers who petition a Texas court to appear in a specific Texas case. These fees are to be deposited into the Basic Civil Legal Services Fund for low-income Texans. 4) 5) Texas Supreme Court Rules Governing Admission to the Bar, Rule XIV (Amended effective December 1, 2005). http://www.ble.state.tx.us/one/flc_main2.htm 6)</p>
<p>UT</p>	<p>The Utah Supreme Court has adopted amendments to the Utah Rules of Professional Conduct, effective November 1, 2005. 1) RPC 05.05. Unauthorized Practice of Law; Multijurisdictional Practice of Law. Identical to ABA Model Rule 5.5. 2) RPC 08.05. Disciplinary Authority; Choice of Law. Identical to ABA Model Rule 8.5. 3) No review. Have a Rule: Utah Supreme Court Rules of Professional Practice, Rule 11-302. Admission <i>Pro Hac Vice</i>. http://www.utcourts.gov/resources/rules/ucja/11_gen/11-302.htm 4) No review. Have a Rule: Admission by Motion; reciprocity required. (Adopted January 24, 2003) http://www.utahbar.org/admissions/Frequently_Asked_Questions/Multijurisdictional_Practice_R/multijurisdictional_practice_r.html 5) Supreme Court Advisory Committee on Rules of Professional Conduct conducting review. Have a Rule: Admissions Rule 16.http://www.utcourts.gov/resources/rules/ucja/ch18/18.htm 6) Supreme Court Advisory Committee on Rules of Professional Conduct conducting review. Do not have a Rule.</p> <hr/> <p>[By order dated January 25, 2005, the Oregon Supreme Court approved amendments to Oregon Admission Rule 15.05 to allow qualified lawyers from Utah to be admitted to practice law in Oregon without having to take and pass the Oregon bar examination. The changes go into effect 2-1-05. As of 2-1-05, Oregon will have admission reciprocity under the requirements of its rule with Washington, Idaho, and Utah.]</p>

VT	<p>On June 17, 2009 the Vermont Supreme Court adopted amended Rules of Professional Conduct, effective September 1, 2009. http://www.vermontjudiciary.org/LC/Statutes and Rules/PROMULGATED-JUN1709-VRPC.pdf</p> <p>1) Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law. Identical to ABA Model Rule 5.5.</p> <p>2) Rule 8.5. Disciplinary Authority; Choice of Law. Identical to ABA Model Rule 8.5.</p> <hr/> <p>Effective March 1, 2003, New Hampshire lawyers may be admitted on motion. http://www.vermontjudiciary.org/</p>
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<p>On December 30, 2008, the Virginia Supreme Court entered an Order amending to Rules 5.5 & 8.5 of the Rules of Professional Conduct that were approved by the Council of the Virginia State Bar on March 1, 2008. http://www.courts.state.va.us/scv/amendments/2009_0301_rule_5_5_8_5_vsb.pdf</p> <p>VA 1) Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law Similar to ABA Model Rule 5.5 except that it applies to lawyers licensed in another U.S. jurisdiction or foreign nation and Rule 5.5 (4) (iv) allows temporary practice that is reasonably related to the representation of a client in a jurisdiction where the lawyer is licensed.</p> <p>2) Rule 8.5 Disciplinary Authority; Choice of Law Similar to ABA Model Rule 8.5. Does not adopt the “predominant effect” test but applies the rules of the jurisdiction in which the lawyer’s conduct occurred.</p> <p>3) The Virginia State Bar adoption of an amended <i>pro hac vice</i> admission rule. http://www.vsb.org/site/regulation/proposed-new-pro-hac-vice-rule-rule-1a4-of-the-rules-of-the-supreme-court Have a Rule: Virginia Supreme Court Rules. Rule 1A:4. <i>Foreign Attorneys - When Allowed by Comity to Participate in the Trial of a Case.</i></p> <p>4) Have a Rule: Virginia Supreme Court Rule 1A:1, 1A:2 and 1A:3 http://www.vbbe.state.va.us/motion.html.</p> <p>5) Effective January 1, 2009, Virginia Supreme Court adopted a rule that allows a non-U.S. attorney to practice in Virginia as a Foreign Legal Consultant. http://www.vsb.org/docs/2008_SC_Rule1A-7.pdf</p> <p>6) Virginia Supreme Court has adopted an amendment to Rule 5.5 that allows temporary practice by foreign lawyers.</p> <p>Proposed in-house counsel rule adopted, Va. Sup. Ct. Rule 1A:5. http://www.vsb.org/publications/va_lawyer/Jan02/corpcounrulechg.pdf Fee: \$50</p>
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<p>WA</p>	<p>On July 10, 2006 the Washington State Supreme Court entered an Order amending the Rules of Professional Conduct, effective September 1, 2006. The Court also amended Washington’s in-house counsel rule, APR 8(f), to allow foreign lawyers to be admitted as in-house counsel. http://www.courts.wa.gov/court_rules/adopted/RPC.doc (1) Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law Identical to ABA Model Rule 5.5. (2) Rule 8.5: Disciplinary Authority; Choice of Law Identical to ABA Model Rule 8.5. (3) Conducting review. Have a rule already: Washington State Supreme Court Rules, Admission to Practice Rules, Rule 8(b). http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=APR&ruleid=gaapr08 (4) No Rule but Idaho and Oregon lawyers can apply for Admission by Motion. Admission to Practice Rule 18 http://www.courts.wa.gov/rules/display.cfm?group=ga&set=APR&ruleid=gaapr18 (5) Conducting review. Have a rule: Washington Admission to Practice Rule 14. (6) Conducting review. Do not have a rule.</p>
<p>WV</p>	<p>On December 10, 2008, the West Virginia Supreme Court posted proposed changes to the Rules of Professional Conduct. http://www.state.wv.us/WVSCA/rules/ABA.pdf 1) Old ABA Model Rule 5.5. 2) Same as ABA Model Rule 8.5 but leaves out second sentence in Rule 8.5 (b) (2). 3) Not under review. Have a Rule: West Virginia Rules for Admission to the Practice of Law, Rule 8.0. Admission <i>pro hac vice</i>. http://www.state.wv.us/wvsca/rules/rule8.htm 4) Not under review. Have a Rule: Rules 4.0 to 4.5, West Virginia Supreme Court of Appeals Rules for Admission to the Practice of Law in West Virginia http://www.state.wv.us/wvsca/Bd%20of%20Law/lawprac.htm. 5) Not under review. Do not have a Rule. 6) Not under review. Do not have a Rule.</p>

<p>WI</p> <p>On July 30, 2008, the Supreme Court of Wisconsin entered an order adopting amendments to Rule 5.5, 8.5, the pro hac vice admission rule and adopting an in-house counsel registration rule, effective January 1, 2009.</p> <p>(1) SCR 20:5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW Similar to ABA Model Rule 5.5. The rule makes it clear that a WI lawyer would not be disciplined in WI for engaging in conduct in another jurisdiction that is permitted in Wisconsin. Uses term “occasional” instead of temporary in Rule 5.5 (c).</p> <p>(2) SCR 20:8.5: Disciplinary authority; choice of law Effective July 1, 2007, the Wisconsin Supreme Court adopted of a rule similar to ABA Model Rule 8.5.</p> <p>(3) SCR 10.03(4)(a)-(e). On July 30, 2008, the Court entered an order amending the pro hac vice rule. Amended rule similar to ABA Model Rule. \$50 fee required. Administrative proceedings would be covered. No language on limitation of appearances.</p> <p>(4) SCR 40.05 Legal competence requirement; proof of practice elsewhere. January 1, 2009 amendment eliminates reciprocity requirement.</p> <p>(5) Not addressed. Do not have a rule.</p> <p>On April 1, 2008, the Wisconsin Board of Bar Examiners has filed a petition with the Wisconsin Supreme Court recommending the adoption of a FLC Rule. http://www.wicourts.gov/supreme/docs/0808petition.pdf</p> <p>(6) Not addressed. Do not have a rule.</p>
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WY	<p>Wyoming has adopted amended Rules of Professional Conduct, effective July 1, 2006.</p> <p>1) Rule 5.5 Unauthorized Practice of Law Similar to ABA Model Rule 5.5 but amended Rule 5.5 only allows temporary practice by out-of-state lawyers in three situations: a) on a temporary basis in Wyoming in a pending proceeding before a tribunal, if the lawyer, is authorized by law or order to appear in such proceeding with a lawyer who is admitted to practice in Wyoming; b) legal services provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires <i>pro hac vice</i> admission; or (c) legal services that the lawyer is authorized to provide by federal law or tribal law of this jurisdiction.</p> <p>Rule 8.5: Disciplinary Authority; Choice of Law Similar to ABA Model Rule 8.5 but uses term “court” instead of “tribunal” and deletes second sentence from Model Rule 8.5(a) and deletes last sentence from (b)(2).</p> <p>3) Not addressed. Have a Rule: Rules of the Supreme Court of Wyoming Providing for the Organization of the Bar Association and Attorneys at Law of the State of Wyoming, Rule 11(b). http://www.courts.state.wy.us/CourtRules_Entities.aspx?RulesPage=OrganizationAndGovernmentOfWyoBarAssociation.xml</p> <p>4) Not addressed. Have a Rule: Wyoming Statute 33-5-110 and Rules 301 to 305 of the Wyoming Rules and Procedures Governing Admission to the Practice of Law. http://www.courts.state.wy.us/CourtRules_Entities.aspx?RulesPage=PracticeOfLawAdmission.xml</p> <p>5) Not addressed. Do not have a Rule.</p> <p>6) Not addressed. Do not have a Rule.</p>
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AMERICAN BAR ASSOCIATION
CENTER FOR PROFESSIONAL RESPONSIBILITY
POLICY IMPLEMENTATION COMMITTEE

In-House Corporate Counsel Rules

AL	<p>Rule IX of the Rules Governing Admission to the State Bar of Alabama</p> <p>http://www.alabar.org/members/ruleIX.pdf.PDF</p> <p>Fee: Application: \$725, Annual: \$300</p>
AK	<p>No Rule.</p> <p>Admission by Motion available: reciprocity required. Alaska Bar Rule 2, Section 2.</p> <p>http://www.alaskabar.org/library/admissionsrules.pdf</p>
AZ	<p>Supreme Court Rules 38, 42, and 46.</p> <p>http://www.supreme.state.az.us/rules/2008%20Rules%20a/R-08-0006.pdf</p> <p>Fee: 75% on application and per annum of dues paid by active member of the Bar.</p>
AR	<p>No Rule.</p> <p>Have adopted Rule 5.5.</p> <p>On February 26, 2004 the Arkansas Supreme Court adopted an Admission by Motion Rule. Similar to ABA Rule but requires reciprocity, fee (\$1500) and designate Clerk of the Court for service of process. (Effective October 1, 2004)</p> <p>http://courts.state.ar.us/opinions/2004a/20040226/admission.html</p>
CA	<p>California Supreme Court Rule 965. Registered In-House Counsel.</p> <p>http://www.courtinfo.ca.gov/reference/documents/mjpfinalrept.pdf</p> <p>Fee: \$550 to apply, \$363 moral character check, \$390 annual State Bar fee and 25 hours CLE.</p>
	<p>The Colorado Rules of Civil Procedure, Chapter 18. Rules Governing Admission To The Bar, Rule 222, Single-Client Counsel Certification.</p>

CO	http://www.michie.com/colorado/lpext.dll?f=templates&fn=main-h.htm&cp= Registration requirement for in-house corporate counsel.
CT	Effective January 1, 2008. Section 2-15A – Authorized House Counsel. Rules of the Superior Court Regulating Admission to the Bar. http://www.jud.ct.gov/CBEC/housecounsel.htm#Forms As of January 1, 2009, applies to foreign lawyers. http://www.jud.ct.gov/CBEC/housecounsel.htm#Amendment to Sec. 2-15A Fee: \$1000 filing fee and payment of annual registration fee and annual payment to client security fund.
DE	Rule 55.1 Limited permission to Practice of In-House Counsel http://courts.delaware.gov/Rules/?supremerule55-1.pdf Fee: \$100. Applies to foreign lawyers.
DC	Rule 49(c)(6) of the Rules of the District of Columbia Court of Appeals http://www.dcappeals.gov/dccourts/docs/rule49.pdf
FL	Rule 17-1.3, Rules Regulating The Florida Bar http://www.floridabar.org/divexe/rrtfb.nsf/FV?Openview&Start=1&Expand=17.1#17.1 Registration requirement for in-house corporate counsel. Application Fee: \$1300 Annual Dues: \$265
GA	No Rule. Have adopted Rule 5.5.
HI	No Rule.
ID	Idaho Rules Governing Admission, Rule 220 http://www2.state.id.us/isb/rules/IBCR.doc Registration requirement for in-house corporate counsel. Application Fee: \$690

	Annual Dues: \$230 (under 3years); \$315 (over 3 years)
IL	<p>Effective July 1, 2004. Rule 716. Limited Admission of House Counsel. http://www.state.il.us/court/SupremeCourt/Rules/Art_VII/ArtVII.htm#Rule716</p> <p>Admission by Motion available: reciprocity required. Illinois Supreme Court Rule 705 http://www.state.il.us/court/SupremeCourt/Rules/Art_VII/artvii.htm#Rule705</p>
IN	<p>Rule 6, Indiana Supreme Court Rules for Admission to the Bar http://www.in.gov/judiciary/rules/ad_dis/index.html#r6</p> <p>Admission by Motion available. Rule 6, Indiana Supreme Court Rules for Admission to the Bar http://www.in.gov/judiciary/rules/ad_dis/index.html#r6</p>
IA	<p>CHAPTER 31 ADMISSION TO THE BAR Rule 31.16 Registration of house counsel.</p> <p>A lawyer may practice law in Iowa under this registration provision for a period of up to five years, then must move for admission by motion. http://www.legis.state.ia.us/Rules/Current/court/courrules.pdf</p> <p>Fee: \$200 and pay annual disciplinary fee</p>
KS	<p>Kansas Supreme Court Rule 712 http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+Admission+of+Attorneys&r2=125</p> <p>Registration requirement for in-house corporate counsel.</p> <p>Application Fee: \$1250 Annual Dues: \$100</p>
KY	<p>Kentucky Supreme Court Rule 2.111 http://www.kyoba.org/rules/scr/2111.html</p> <p>Registration requirement for in-house corporate counsel.</p> <p>Application Fee: \$1000 Annual Fees: \$171 (under 5 years); \$221 (over 5 years)</p>

<p>LA</p>	<p>La. S. Ct. Rule XVII, Section 14 Section 14. Limited Admission for In-House Counsel</p> <p>http://www.lasc.org/rules/supreme/RuleXVII.asp</p> <p>Application Fee: \$300 Annual Fees: Annual Disciplinary Assessment required of attorneys admitted to practice three years or more pursuant to La. S. Ct. Rule XIX, Section 8; and Louisiana State Bar Association annual dues pursuant to Article V of the Articles of Incorporation of the Louisiana State Bar Association during the period of the limited license.</p>
<p>ME</p>	<p>No Rule.</p>
<p>MD</p>	<p>Maryland Code, Section 10-206(d), Business Occupations and Professions</p> <p>http://law.justia.com/maryland/codes/gbo/10-206.html</p>
<p>MA</p>	<p>Rules of the Supreme Judicial Court, Chapter Four</p> <p>Rule 4:02, subsection (9)</p> <p>Registration requirement for in-house corporate counsel.</p> <p>http://www.mass.gov/obcbbo/rule402amend.pdf</p>
<p>MI</p>	<p>Michigan Board of Law Examiners Rule 5</p> <p>http://coa.courts.mi.gov/rules/documents/7RulesForTheBoardOfLawExaminers.pdf</p> <p>Registration requirement for in-house corporate counsel.</p> <p>Application Fee: \$600 Annual Dues: \$260</p>
<p>MN</p>	<p>Minn. Sup. Ct. Admission Rule 9</p> <p>http://www.mncourts.gov/rules/ble_rules.html</p> <p>Registration requirement for in-house corporate counsel.</p> <p>Application Fee: \$825 Annual Dues: None</p>
<p>MS</p>	<p>No Rule.</p>

<p>MO</p>	<p>Missouri Supreme Court Rule 8.105</p> <p>http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/779a56307ce22ae386256db70073edd2?OpenDocument</p> <p>Registration requirement for in-house corporate counsel.</p> <p>Application Fee: \$750 Annual Dues: \$183</p>
<p>MT</p>	<p>No Rule.</p>
<p>NE</p>	<p>No Rule.</p> <p>Rule 5.5 adopted.</p> <p>Admission by Motion available.</p> <p>Rule 5, Nebraska Supreme Court Admission Rules for Attorneys</p> <p>http://www.supremecourt.ne.gov/rules/pdf/Ch3Art1.pdf</p>
<p>NV</p>	<p>Nevada Supreme Court Rule 49.10</p> <p>http://www.leg.state.nv.us/CourtRules/scr.html</p> <p>Registration requirement for in-house corporate counsel.</p> <p>Fee: \$150 plus annual fee for member of State Bar of Nevada</p>
<p>NH</p>	<p>No Rule.</p> <p>Rule 5.5 adopted.</p> <p>Admission by Motion available: reciprocity required. (Effective March 1, 2003)</p> <p>Amended Supreme Court Rule 42</p> <p>http://www.courts.state.nh.us/rules/scr/scr-42.htm</p>
<p>NJ</p>	<p>Rule 1:27 Admission to Practice Section 1:27-2. Limited License; In-House Counsel. (Adopted September 10, 2003)</p> <p>http://www.judiciary.state.nj.us/notices/reports/Bar-Admissions-Report-2003.pdf</p> <p>Fee: Annual assessments for Discipline, Lawyers' Fund and Lawyers Assistance</p>

	program.
NM	No Rule but allowed under Rule 5.5(d)(1).
NY	No Rule. Admission by Motion available: reciprocity required. NYCRR § 520.10 (Admission Without Examination) http://www.courts.state.ny.us/ctapps/520rules.htm#10
NC	No Rule. Have adopted Rule 5.5. See also, North Carolina General Statutes, Chapter 84-5(b). http://www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl?0084
ND	North Dakota Supreme Court Rules: Rule 3, Admission to Practice Rules http://www.ndcourts.com/Court/Notices/20040256/AdmissionR3_Final.htm Fee: Annual fee equivalent to what a ND lawyer admitted five years would pay. 45 hours of CLE every three years.
OH	Ohio Supreme Court Rules for the Government of the Bar, Rule VI, Section 3. http://www.sconet.state.oh.us/Rules/govbar/govbar.pdf Registration requirement for in-house corporate counsel. Application Fee: \$250 Annual Dues: \$250 (every two years)
OK	Okla. R. Gov. Adm. Law Practice, Art. 2, Sec. 5 http://www.okbar.org/admissions/rules.htm Registration requirement for in-house corporate counsel. Application Fee: \$750 Annual Dues: \$175
	Ore. Sup. Ct. Rule 16.05

<p>OR</p>	<p>http://www.osbar.org/_docs/rulesregs/admissions.pdf#page=50&view=FitH,400</p> <p>Registration requirement for in-house corporate counsel.</p> <p>Application Fee: \$750 Annual Dues: \$416</p>
<p>PA</p>	<p>Rule 302: Limited In-House Corporate Counsel License</p> <p>http://www.pabarexam.org/bar_admission_rules/302.htm</p>
<p>RI</p>	<p>Article II, Rule 9, Rules of the Rhode Island Supreme Court.</p> <p>http://www.courts.state.ri.us/supreme/pdf-files/amendment-rule9.pdf</p>
<p>SC</p>	<p>S.C. App. Ct. Rule 405</p> <p>http://www.judicial.state.sc.us/courtReg/displayRule.cfm?ruleID=405&subRuleID=&ruleType=APP</p> <p>Registration requirement for in-house corporate counsel.</p> <p>Application Fee: \$400 Annual Dues: \$225</p>
<p>SD</p>	<p>No Rule.</p> <p>Have adopted Rule 5.5.</p>
<p>TN</p>	<p>Tenn. Sup. Ct. R. 7, Section 10.01. Registration of In-House Counsel</p> <p>Fee required.</p>
<p>TX</p>	<p>No Rule.</p> <p>In-house counsel not required to be admitted. Texas Board of Bar Examiners Policy Statement on Lawful Practice.</p> <p>http://www.ble.state.tx.us/atty_us/lawpolicy.htm</p>
<p>UT</p>	<p>Rule 20. Qualifications for admission of house counsel applicants. (Effective 11/01/06).</p> <p>http://www.utcourts.gov/resources/rules/ucja/ch14/07%20Admissions/USB14-720.html</p>

	<p>Admission by Motion: reciprocity required.</p> <p>The current annual fee is \$350. (Utah Supreme Court Rule 14-802 – Authorization to Practice Law, subsection (b)(1)).</p>
VT	<p>No Rule.</p> <p>Admission by Motion: reciprocity for New Hampshire lawyers.</p> <p>Rule 7, Vermont Supreme Court Rules of Admission to the Bar</p> <p>http://www.vermontjudiciary.org/.</p>
VA	<p>Proposed in-house counsel rule adopted, Va. Sup. Ct. Rule 1A:5 http://www.vsb.org/site/members/cc-rule1a-5</p> <p>Part II. Corporate Counsel Registrants applies to foreign lawyers.</p> <p>Fee: \$150</p> <p>On February 19, 2005, the Virginia State Bar Council will meet to consider a proposed rule that will allow a non-U.S. attorney to practice in Virginia as a Foreign Legal Consultant (FLC). The proposed rule is work product of the Virginia State Bar's Task Force on Multi-jurisdictional Practice. http://www.vsb.org/profguides/proposed/rule_1A7.html</p>
WA	<p>Lawyers licensed in U.S. jurisdictions may serve as in-house Counsel under Rule 5.5 (d)(1) with no additional registration, fee or CLE requirements.</p> <p>http://www.wsba.org/lawyers/licensing/mjp.htm</p> <p>Registration requirement for foreign in-house corporate counsel. (Effective September 1, 2006, lawyers licensed only in foreign countries may be admitted as in-house counsel}.</p> <p>Wash. Admission to Practice Rule 8(f)</p> <p>http://www.courts.wa.gov/rules/display.cfm?group=ga&set=APR&ruleid=gaapr08</p> <p>Application Fee: \$650 Annual Dues: \$169 (under 4 years); \$278 (under 6 years); \$341 (over 6 years)</p>
WV	<p>No Rule.</p> <p>Admission by Motion: reciprocity required.</p>

	<p>Rules 4.0 to 4.5, West Virginia Supreme Court of Appeals Rules for Admission to the Practice of Law in West Virginia</p> <p>http://www.state.wv.us/wvsca/Bd%20of%20Law/lawprac.htm.</p>
WI	<p>Supreme Court Rule 10.03(4)(f). (Adopted July 30, 2008)</p> <p>http://www.wicourts.gov/sc/rulhear/DisplayDocument.html?content=html&seqNo=33576</p> <p>Fee: \$250</p>
WY	<p>No Rule.</p> <p>Allowed under Rule 5.5 of the Rules of Professional Conduct.</p> <p>http://courts.state.wy.us/Rules/Pending%20Rules/RulesofProfessionalConductforAttorneysatLaw--July1,2006.htm</p> <p>Admission by Motion: reciprocity required.</p> <p>Wyoming Statute 33-5-110 and Rules 301 to 305 of the Wyoming Rules and Procedures Governing Admission to the Practice of Law.</p> <p>http://courts.state.wy.us/RULES/Rule%20and%20Procedures%20Governing%20Admissions.html.</p>

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COMPARISON OF ABA MODEL RULE FOR REGISTRATION OF IN-HOUSE COUNSEL WITH STATE VERSIONS

AMERICAN BAR ASSOCIATION CENTER FOR PROFESSIONAL RESPONSIBILITY POLICY IMPLEMENTATION COMMITTEE

	Continuous Presence/Residency Requirement	Registration: (a) with State Authority (b) within a certain time	(a) Application Fee (b) Annual Fee	Foreign Lawyer Register as In-House Counsel	Appearances Before Tribunals Allowed	Pro Bono Legal Services Allowed	Host State CLE Required
ABA Model Rule	Yes	(a) Yes (b) 180 days	(a) Yes (b) Yes	No	No	Yes	N/A ¹
AL	Exclusively employed by a business located in the State of Alabama.	(a) Bar (b) 180 days	(a) Yes - \$725 (b) Yes - \$300	No	No	N/A	N/A
AK	No rule.						
AZ	Yes: employed within the State; not intended to apply to temporary or sporadic presence.	(a) Yes (b) 90 days	(a) Yes-75% of bar dues (b) Yes-75% of bar dues	Yes	No	Yes	N/A

¹ N/A means not addressed in the rule.

	Continuous Presence/Residency Requirement	Registration: (a) with State Authority (b) within a certain time	(a) Application Fee (b) Annual Fee	Foreign Lawyer Register as In-House Counsel	Appearances Before Tribunals Allowed	Pro Bono Legal Services Allowed	Host State CLE Required
AR	No rule: but see Rule 5.5(d)(1)						
CA	Residency required.	(a) Bar (b) 180 days	(a) Yes: \$550 to apply, \$363 moral character check; 25 hrs. CLE (b) Yes: \$390	No	No	Registered legal services attorney.	Yes
CO	Yes	(a) Yes (b) N/A	(a) \$725 (b) Yes	No	Yes. Lawyer may act on behalf of single client as if licensed.	Yes	Yes
CT	No specific provision, but termination occurs after 180 consecutive days of relocation of House Counsel outside of Connecticut	(a) Yes (b) Within 3 months before or after employment	(a) \$1000 (b) Yes	Yes, as of January 1, 2009	No	No	No
DE	N/A	(a) Yes (b) Within 1 year	(a) Yes (b) No	Yes	No	Yes	Yes
DC	N/A	N/A	N/A		No	N/A	N/A
FL	Yes. Must be residing or relocating to Florida within 6 months of application.	(a) Bar (b) within 6 months of employment	(a) \$1300 (b) \$265	No	No	N/A	N/A

	Continuous Presence/Residency Requirement	Registration: (a) with State Authority (b) within a certain time	(a) Application Fee (b) Annual Fee	Foreign Lawyer Register as In-House Counsel	Appearances Before Tribunals Allowed	Pro Bono Legal Services Allowed	Host State CLE Required
GA	No Rule. See 5.5 (d)(1)						
HI	No Rule						
ID	Must maintain his/her office for the practice of law as house counsel within the state on behalf of corporate employer	(a) Bar (b) 60 days prior to assuming duties as in-house counsel	(a) \$690 (b) \$255, 1-3 years practice \$340, over 3 years	No	No	N/A	Yes
IL	N/A. Exclusive employment by Illinois entity required.	(a) Yes (b) 120 days	(a) \$400 (b) \$105, 1-3 years practice; \$289, 3 or more years	No	No	Yes, with statement to Administrator and proof of sponsoring organization	Yes
IN	Yes	(a) Yes (b) N/A	(a) \$800 (b) No, \$50 renewal fee, maximum 5 yrs. renewal	No	N/A	N/A	Must attend law update Forum within 12 months
IA	Maintains an office or systematic and continuous presence	(a) Yes (b) 90 days	(a) \$200 to Client Security Commission (b) \$50 Annual Assessment to Client Security	No	No	N/A	N/A

	Continuous Presence/Residency Requirement	Registration: (a) with State Authority (b) within a certain time	(a) Application Fee (b) Annual Fee	Foreign Lawyer Register as In-House Counsel	Appearances Before Tribunals Allowed	Pro Bono Legal Services Allowed	Host State CLE Required
KS	Full-time limited to the business of the Kansas employer	(a) Yes (b) Within 90 days of beginning employment	(a) \$1250 (b) \$100	No	“legal services” for employer’s business	N/A	Yes
KY	Will perform legal services solely for employer	(a) Yes (b) N/A	(a) \$1000 (b) \$171, under 5 years; \$221, over 5 years	No	No, Unless licensed KY lawyer secured as co-counsel	N/A	N/A
LA	Employed exclusively as lawyer for employer	(a) Yes (b) N/A	(a) \$300 plus annual discipline & registration fees (b) After 2009, \$235 plus Annual Discipline fee as set by LSBA	No	No	N/A	Yes
ME	No Rule						
MD	N/A	(a) No (b) N/A	(a) N/A (b) N/A	No	No	Yes	N/A
MA	N/A	(a) Yes (b) N/A	(a) N/A (b) Yes (as established by the Court from time to time)	No	No	N/A	N/A
MI	Must intend in good faith to establish an office in Michigan	(a) Yes (b) N/A	(a) \$600 (b) N/A	No	No	N/A	N/A

	Continuous Presence/Residency Requirement	Registration: (a) with State Authority (b) within a certain time	(a) Application Fee (b) Annual Fee	Foreign Lawyer Register as In-House Counsel	Appearances Before Tribunals Allowed	Pro Bono Legal Services Allowed	Host State CLE Required
MN	Employed in Minnesota for a single entity	(a) Yes (b) N/A	(a) \$625 (b) N/A	No	No	N/A	N/A
MS	No Rule						
MO	Employed exclusively for an entity	(a) Yes (b) N/A	(a) \$750 (b) \$183	No	Yes	Yes	Yes
MT	No Rule						
NE	No Rule						
NV	Employed exclusively for entity	(a) Yes (b) N/A	(a) \$150 (b) Yes, equal to current rate for time in practice	No	No	Yes, with separate certification	Yes
NH	No Rule						
NJ	Applicant performs legal services solely for designated employer	(a) Yes (b) 60 Days	(a)\$750 (b) Yes, Discipline, Client Protection Fund & LAP	No	No	N/A	N/A
NM	No Rule See RPC 5.5 (d) (1)						
NY	No Rule						

	Continuous Presence/Residency Requirement	Registration: (a) with State Authority (b) within a certain time	(a) Application Fee (b) Annual Fee	Foreign Lawyer Register as In-House Counsel	Appearances Before Tribunals Allowed	Pro Bono Legal Services Allowed	Host State CLE Required
NC	No						
ND	Employed in North Dakota as in-house Counsel exclusively for corporation	(a) Yes (b) N/A	(a) \$380 equivalent to ND lawyer who has practiced for 5 years (b) \$380	No	No	N/A	Yes
OH	Employed full-time by Non-governmental by Ohio employer	(a) Yes (b) N/A	(a) \$350 (b) \$350	No	No	N/A	Yes
OK	Must establish residence	(a) Bar (b) N/A	(a) \$750 (b) \$175, but not in rule	No	N/A	N/A	N/A
OR	Employed by business entity authorized to do business in Oregon	(a) Yes (b) N/A	(a) \$750 (b) \$416	No	No	Yes	Yes
PA	Employed on more than a temporary basis or if maintains an office or other systematic or continuous presence	(a) Yes (b) 6 months	(a) \$650 (b) \$175	No	No	Yes	Yes
RI	Employed by Corporation with office in RI	(a) Yes (b) N/A	(a) N/A (b) \$200	No	No	N/A	Yes
SC	Provides legal services solely to employer	(a) Yes (b) N/A	(a) \$400 (b) \$100	No	Yes-state agency and magistrate in civil matters No-any other SC Court	Yes	N/A

	Continuous Presence/Residency Requirement	Registration: (a) with State Authority (b) within a certain time	(a) Application Fee (b) Annual Fee	Foreign Lawyer Register as In-House Counsel	Appearances Before Tribunals Allowed	Pro Bono Legal Services Allowed	Host State CLE Required
SD	No Rule						
TN	Continuous presence.	(a) Yes (b) Within 180 days	(a) Yes (b) Annual fees payable by active member	No	No	Yes	Yes
TX	No Rule Admission not Required for In-House Counsel						
UT	Must be bona fide resident of the state of Utah or maintain an office as employer's house counsel in state	(a) Yes (b) Within 6 months	(a) \$625 (b) \$350	No	No	N/A	Must complete CLE of licensing state
VT	No Rule						
VA	Employed as lawyer exclusively for entity	(a) Yes (b) N/A	(a) \$150 (b) \$250	Yes: identified as a "Corporate Counsel Registrant".	Yes	Yes	Yes
WA	Only lawyers licensed in foreign country must register as House Counsel; US licensed lawyers may practice as house counsel under Rule 5.5	(a) Foreign Lawyers - Yes U.S. Lawyers – NO (b) N/A	(a) Foreign Lawyers - \$625 (b) \$169 – 341	Yes	No	N/A	No
WV	No Rule						

	Continuous Presence/Residency Requirement	Registration: (a) with State Authority (b) within a certain time	(a) Application Fee (b) Annual Fee	Foreign Lawyer Register as In-House Counsel	Appearances Before Tribunals Allowed	Pro Bono Legal Services Allowed	Host State CLE Required
WI	Employed in Wisconsin on a continuing basis.	(a) Board of Bar Examiners (b) 60 days	(a) No (b) \$250	Yes	No	Yes	No
WY	No Rule						

http://www.abanet.org/cpr/mjp/in-house_comp.pdf

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**STATE IMPLEMENTATION OF ABA MODEL RULE 5.5
 (MULTIJURISDICTIONAL PRACTICE OF LAW)**

	Highest Court has adopted a rule identical to ABA Model Rule 5.5 (14)	Highest Court has adopted a rule similar to ABA Model Rule 5.5 (29)	Recommendation pending in highest Court to adopt a rule identical to ABA Model Rule 5.5 (1)	Recommendation pending in highest Court to adopt a rule similar to ABA Model Rule 5.5 (0)	States whose MJP study committees have recommended adoption of a rule identical to ABA Model Rule 5.5 (1)	States whose MJP study committees have recommended adoption of a rule similar to ABA Model Rule 5.5 (0)	States that have created committees to study ABA MJP recommendations (4)
AL		X					
AK	X						
AZ		X					
AR	X						
CA		X					
CO		X					
CT		X					
DE		X					
DC		X (Rule 49, D.C. Ct. of Apps.)					
FL		X					
GA		X					

	Highest Court has adopted a rule identical to ABA Model Rule 5.5	Highest Court has adopted a rule similar to ABA Model Rule 5.5	Recommendation pending in highest Court to adopt a rule identical to ABA Model Rule 5.5	Recommendation pending in highest Court to adopt a rule similar to ABA Model Rule 5.5	States whose MJP study committees have recommended adoption of a rule identical to ABA Model Rule 5.5	States whose MJP study committees have recommended adoption of a rule similar to ABA Model Rule 5.5	States that have created committees to study ABA MJP recommendations
	(14)	(29)	(1)	(0)	(1)	(0)	(4)
HI							X
ID		X					
IL	X						
IN	X						
IA	X						
KS							
KY		X					
LA		X					
ME		X					
MD	X						
MA	X						
MI			X				
MN		X					
MS					X		
MO		X					
MT							
NE	X						

	Highest Court has adopted a rule identical to ABA Model Rule 5.5	Highest Court has adopted a rule similar to ABA Model Rule 5.5	Recommendation pending in highest Court to adopt a rule identical to ABA Model Rule 5.5	Recommendation pending in highest Court to adopt a rule similar to ABA Model Rule 5.5	States whose MJP study committees have recommended adoption of a rule identical to ABA Model Rule 5.5	States whose MJP study committees have recommended adoption of a rule similar to ABA Model Rule 5.5	States that have created committees to study ABA MJP recommendations
	(14)	(29)	(1)	(0)	(1)	(0)	(4)
NV		X					
NH	X						
NJ		X					
NM		X					
NY							X
NC		X					
ND		X					
OH		X					
OK		X					
OR	X						
PA		X					
RI	X						
SC		X					
SD		X					

	Highest Court has adopted a rule identical to ABA Model Rule 5.5 (14)	Highest Court has adopted a rule similar to ABA Model Rule 5.5 (29)	Recommendation pending in highest Court to adopt a rule identical to ABA Model Rule 5.5 (1)	Recommendation pending in highest Court to adopt a rule similar to ABA Model Rule 5.5 (0)	States whose MJP study committees have recommended adoption of a rule identical to ABA Model Rule 5.5 (1)	States whose MJP study committees have recommended adoption of a rule similar to ABA Model Rule 5.5 (0)	States that have created committees to study ABA MJP recommendations (4)
TN		X					
TX							X
UT	X						
VT	X						
VA		X					
WA	X						
WV				Does not address MJP. http://www.state.wv.us/WVSCA/rules/ABA.pdf			
WI		X					
WY		X					

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