

In-house Counsel Guide to Multijurisdictional Practice

In-house counsel are increasingly mobile, working across jurisdictions on behalf of their employers. Whether moving states for a new in-house position or needing to provide legal services in jurisdictions other than where their office is located, in-house counsel often are faced with the need to figure out the rules that govern licensing and authorization to practice across the United States.

The multijurisdictional practice of law (“MJP”) refers to instances when a lawyer is permitted to provide legal services in a jurisdiction where he or she is not licensed to practice law. This commonly arises when in-house counsel accept a job in a state where they are not licensed and also comes into play when in-house counsel must address occasional or temporary legal issues in a state other than where they are licensed to practice.

While most states allow MJP, it is important to note that each state handles MJP issues differently and there is little consistency in how states monitor and regulate the activities of out-of-state lawyers. Failure to adhere to a state’s MJP rules can result in engaging in the unauthorized practice of law (“UPL”). Prior to engaging in MJP, in-house counsel should understand relevant rules and the risks associated with UPL, including:

- Reputational risk
- State bar disciplinary proceedings
- Loss of attorney-client privilege

This document is intended as a starting point for in-house counsel to determine their professional and ethical responsibilities prior to locating in a new jurisdiction or otherwise engaging in MJP.

Different Types of Admission and MJP

Before working in a new jurisdiction, in-house counsel should familiarize themselves with the jurisdiction’s rules of admission and/or its MJP rules. Multijurisdictional practice comes in several different forms, and it is important to understand the different rights and availability of each form. The forms most relevant to in-house counsel include: in-house authorization to practice or in-house registration; temporary practice; and pro hac vice admission. Lawyers may also determine that rather than rely on MJP rules, they will instead apply for full admission to the state in which their new office is located.

Admission on Motion

Many states allow attorneys who are licensed and in good standing in other U.S. jurisdictions to apply for admission on motion. This means the applicant can become a licensed attorney in that state without sitting for the state's bar examination. The National Council of Bar Examiners and the American Bar Association ("ABA") annually publish *The Comprehensive Guide to Bar Admission Requirements*, which provides updated information on bar admission requirements in all U.S. jurisdictions. This guide also includes a directory of state bar admission agencies and is useful in comparing the regulations across multiple jurisdictions.

While the requirements for admission on motion vary by state, typically an applicant will need to supply certificates of good standing from all other jurisdictions in which they are admitted to practice and undergo the state's character and fitness examination. There may also be an experience threshold – for example, an applicant must have been engaged in the active practice of law for five of the last seven years.

In states where admission on motion is available, it can be an attractive option, as it grants an attorney full admission to the bar and does not restrict any practice activities. In-house counsel who are admitted in this manner to a new jurisdiction will be able to perform the same activities as other attorneys licensed in the jurisdiction– for example, making court appearances and representing pro bono clients without limitations. However, fees and background check requirements for admission on motion may be burdensome. Additionally, some states limit admission on motion to those who are licensed in a jurisdiction that allows the first state's attorneys to waive in to the jurisdiction– this is referred to as reciprocity. If the lawyer is not licensed in a jurisdiction with reciprocity, the only option for full admission is likely to sit for the bar exam in the new state.

In-house Registration or Authorization

Most states provide rules for in-house counsel who are licensed in other U.S. jurisdictions to practice without full admission to the state bar.¹ Rule 5.5(d) of the ABA's Model Rules of Professional Conduct contains provisions for in-house counsel practice.

¹ Neither Hawaii nor Mississippi provide for in-house practice on an out-of-state license. Additionally, admission on motion is generally not available in Hawaii.

Rule 5.5(d) allows lawyers admitted and in good standing in another U.S. or foreign jurisdiction to provide legal services through an office or continuous presence in a jurisdiction, provided that the services:

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

In many states, in-house counsel must take the additional step of registering with the state before they can practice under Rule 5.5(d). Some states have an equivalent to ABA Model Rule 5.5(d) and allow in-house counsel to practice without registering with the state. Conversely, some states have not adopted ABA Model Rule 5.5(d) but do allow in-house counsel to practice based on their out-of-state license if they register with the state bar. Careful reading of both a state's rules of admission and its ethical rules addressing MJP and UPL are required to fully understand the requirements and scope of in-house practice on an out-of-state license. Failure to register as in-house counsel in a state requiring such registration can result in disciplinary proceedings and later difficulties in gaining admission to other state bars. The table below identifies the states that require in-house registration and those that do not.

Registration Requirement	No Registration Requirement
Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Virginia, Washington, Wisconsin	Alaska, Arkansas, District of Columbia, Georgia, Maine, Maryland, Montana, New Hampshire, New Mexico, North Carolina, South Dakota, Texas, Vermont, West Virginia, Wyoming

Temporary Practice and Pro Hac Vice Admission

Admission on motion and in-house counsel registration or authorization to practice address the requirement to be licensed in the jurisdiction where you are physically located. However, in-house practice often raises issues occurring in other jurisdictions, and in-house lawyers are often asked to advise on the laws of other jurisdictions or travel to various company locations in the course of their legal roles. When these multi-jurisdictional issues arise, in-house counsel should consider whether there are temporary practice rules their actions can fall under or whether they need to apply for admission pro hac vice in another jurisdiction.

Subsection (c) of ABA Model Rule 5.5 addresses temporary practice. It states that lawyers admitted and in good standing in another U.S. jurisdiction are able to provide legal services on a temporary basis, provided the legal services:

- (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
- (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
- (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or
- (4) are not within paragraphs (c) (2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

The lack of uniformity in how states define "the practice of law" poses a challenge for lawyers attempting to avoid UPL, and jurisdictions generally prefer to evaluate these questions on a case-by-case basis. Comment 6 to ABA Model Rule 5.5 is further illustrative of the potentially broad definition of the temporary practice of law:

"There is no single test to determine whether a lawyer's services are provided on a 'temporary basis' in this jurisdiction and may therefore be permissible under paragraph (c). Services may be 'temporary' even though the lawyer provides services in this jurisdiction on a recurring

basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.”

Presumably, most of in-house counsel’s activities will fall under Rule 5.5(c)(4), but there is limited real-world guidance on temporary practice in the in-house context. However, Comment 14 to ABA Model Rule 5.5(c)(4) seems to indicate a broad application of the rule to corporate matters such as those in which in-house counsel would be involved:

Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer’s client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer’s work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client’s activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each.

Although the vast majority of states have explicit authorizations for temporary legal practice,² in-house counsel should be aware that many jurisdictions’ rules vary significantly from the ABA Model Rule. Therefore, in-house counsel should check the rules of the subject jurisdiction before engaging in temporary practice.

For in-house counsel whose work requires them to conduct business extending past the limitations provided by Rule 5.5, namely, appearing in a court proceeding on behalf of their employer, it is usually necessary to petition a court for permission to appear pro hac vice. State-by-state pro hac vice admission rules vary with regard to the number of pro hac vice admissions allowed and the requirements for a sponsoring lawyer. The ABA offers a comparison of their Model Rule on Pro Hac Vice Admission with state versions.

² California, Hawaii, Texas and Mississippi do not have rules that explicitly authorize temporary legal practice in the state.

Conclusion

For in-house counsel tasked with working across jurisdictions, researching the laws in each state where they provide assistance to their employer is of paramount importance. The rules governing in-house licensing and authorization to practice vary considerably and change often, and in order to avoid engaging in UPL, it is the professional responsibility of in-house counsel to maintain awareness of the unique nature of their work and the liabilities attached to it.

ACC maintains a state-by-state list of the MJP rules applicable to in-house practice on the Advocacy section of its website: <https://advocacy.acc.com/>. If you have questions about in-house multijurisdictional practice, please contact Stephanie Johnson, Manager, Advocacy and Public Policy at s.johnson@acc.com.