

MULTIJURISDICTIONAL PRACTICE/UPL ISSUES

Background/

“Multijurisdictional practice” (MJP) describes the legal work of a lawyer in a jurisdiction in which the lawyer is not admitted to practice law. The California Supreme Court’s decision in *Birbrower, Montalbano, Condon & Frank v. Superior Court of Santa Clara County*, 949 P.2d 1 (Cal.1998), was the catalyst for the national debate on MJP. *Birbrower* held that lawyers not licensed to practice law in California violated California’s misdemeanor unauthorized practice of law (UPL) provision when they assisted a California corporate client in connection with an impending California arbitration under California law, and were therefore barred from recovering fees under a written fee agreement for services the lawyers rendered while they were physically or “virtually” in California. Although the state law was subsequently and temporarily amended to allow out-of-state lawyers to obtain permission to participate in certain California arbitrations, concerns persisted.

The American Bar Association Commission on Multijurisdictional Practice, created in July 2000, undertook a national study on the application of current ethics, bar admission, lawyer discipline, and *pro bar vice* admission rules to the multijurisdictional practice of law. In May 2002, the Multijurisdictional Practice Commission issued its final report. The commission recommended:

1. The ABA affirm its support for the principle of state judicial regulation of the practice of law.
2. Amendment of ABA Model Rule of Professional Conduct 5.5(c) to define circumstances in which a lawyer who is admitted in a United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may practice law on a temporary basis in another jurisdiction.
3. Amendment of ABA Model Rule 5.5(d) to establish multijurisdictional practice standards relating to (i) legal services by a lawyer who is an employee of a client and (ii) legal services that the lawyer is authorized by federal or other law to render in a jurisdiction in which the lawyer is not licensed to practice law.
4. Amendment of ABA Model Rule 8.5 to clarify the authority of a jurisdiction to discipline lawyers licensed in another jurisdiction who practice law within their jurisdiction pursuant to the provisions of Rule 5.5 or other law.

The final report of the ABA Commission on Multijurisdictional Practice was adopted by the ABA House of Delegates at the 2002 Annual Meeting in Washington, D.C.

After approval by the ABA House of Delegates, the ABA MJP recommendations were incorporated into the revised Model Rules of Professional Conduct. The Model Rules were referred by the ABA to the states for their consideration. The ABA Joint Committee on Lawyer Regulation tracks state actions implementing the multi-jurisdictional practice recommendations.

Missouri Bar Activities

The Missouri Bar Special Committee on Multijurisdictional Practice supported the recommendations of the ABA commission. At the committee's request, the Board of Governors of The Missouri Bar endorsed the report of the ABA commission.

To implement the ABA recommendations, the Missouri Bar special committee proposed amendments to Missouri Rules of Professional Conduct 4-5.5 and 4-8.5. The Board of Governors voted to submit the amendments to the Supreme Court of Missouri for its consideration.

On March 9, 2005, the Supreme Court of Missouri adopted amended Missouri Rules of Professional Conduct 4-5.5 and 4-8.5 relating to multijurisdictional practice. Amended Rules 4-5.5 and 4-8.5 substantially adopt the ABA recommendations, with modifications to accommodate particular aspects of the Missouri Rules of Professional Conduct, including Rule 8.105, which authorizes limited admission of in-house counsel.