

# CHAPTER 13

## AN UPDATE ON MULTIJURISDICTIONAL PRACTICE AND ADR

By Bruce E. Meyerson\*

### I. Introduction

As more and more national and international businesses expand their use of mediation and arbitration, attorneys representing these entities find themselves traveling from state to state representing their client in ADR proceedings.

In the past, state regulation of the practice of law had not kept up with this rapidly changing expansion in the use of ADR proceedings by companies doing business throughout the United States. Most states were slow to make their own legal ethics rules more flexible in permitting out-of-state attorneys to appear intermittently on behalf of clients in mediation and arbitration without becoming licensed in those jurisdictions.<sup>1</sup> To remedy this situation, the American Bar Association (“ABA”) made important additions to its Model Rules of Professional Conduct (“Model Rules”) for states to consider concerning the multijurisdictional practice of law. This article concerns only one aspect of the multijurisdictional practice of law—the circumstances when a

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\* Bruce Meyerson, a mediator and arbitrator in Phoenix, Arizona, serves on the American Arbitration Association’s roster of neutrals. He is a past chair of the American Bar Association Section of Dispute Resolution. He can be reached at brucemeyerson@msn.com. The author acknowledges the assistance of John A. Holtaway of the American Bar Association, who kindly offered useful suggestions and reviewed this article.

<sup>1</sup> See generally RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 3 (1998); Sarah Rudolph Cole, *Unauthorized Practice of Law Charges*, 13 DISP. RESOL. MAG 26 (Fall 2006); G. Hammond, *Multijurisdictional Practice: An Analysis of the ABA’s proposed Changes to Rule 5.5 of the Rules of Professional Conduct*, 26 SETON HALL LEG. J. 533 (2002); Harriet Miers, *Recommended Reading: Issues for the Multijurisdictional Lawyer Where Pro Hac Vice Admission Does Not Apply*, ARK. L. NOTES 131 (2001); D. Ryan Nayar, *Unauthorized Practice of Law in Private Arbitral Proceedings: A Jurisdictional Survey*, 6 J. AM. ARB. 1 (2007).

lawyer admitted to practice in one state, occasionally appears in another state to represent a party in a private arbitration.

## II. Model Rule 5.5(c)(3)

The highest court in a jurisdiction regulates the practice of law in that jurisdiction. *Pro hac vice* rules permit lawyers to temporarily practice before courts in states where they are not admitted but with few exceptions noted later in this article, these rules do not apply to attorney representing parties in private arbitration proceedings. Thus, courts have granted *pro hac vice* admission to lawyers in individual court cases for some time, but no comparable procedure typically exists in private arbitration proceedings.

Disturbing to many has been the reaction by some courts to attorneys who travel out of their home jurisdiction to represent clients in arbitration or mediation proceedings in other states. For example, in 2003, the Florida Supreme Court, in *Florida Bar v. Rapoport*,<sup>2</sup> enjoined Mr. Rapoport, a lawyer licensed to practice in the District of Columbia, from representing parties in securities arbitrations in Florida. Not surprisingly, relying upon an earlier decision,<sup>3</sup> the court found that giving legal advice and performing the traditional tasks of lawyers in arbitration proceedings was “the practice of law.”<sup>4</sup> Citing the rules of The Florida Bar, the court noted that in Florida, a “nonlawyer or nonattorney is an individual who is not a member of The Florida Bar.” Rapoport’s situation, however, was not particularly sympathetic as he actually operated a law practice in Florida and advertised in at least one Florida newspaper.

The Florida decision followed by five years the ruling of the California Supreme Court in *Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court*.<sup>5</sup> That decision involved a fee dispute in which an out-of-state law firm, in defending against a claim it had committed legal malpractice in California, sued to recover its attorneys’ fees. Birbrower, an attorney at the firm, came to California to file a demand for arbitration

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<sup>2</sup> 845 So. 2d 874 (Fla. 2003).

<sup>3</sup> *Florida Bar re Advisory Opinion on Nonlawyer Representation in Securities Arbitration*, 696 So. 2d 1178 (Fla. 1997).

<sup>4</sup> E.g., *Matter of Creasy*, 12 P. 3d 214 (Ariz. 2002); *contra Colmar, Ltd. v. Freemantlemedia N. Am., Inc.*, 801 N.E. 2d 1017 (Ill. App. 2003) (representing a party in arbitration does not constitute the practice of law).

<sup>5</sup> 949 P.2d 1 (Cal. 1998).

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with the San Francisco office of the American Arbitration Association, and to interview arbitrators; he subsequently returned to California to pursue a settlement of the dispute.

The California Business and Professions Code provided at the time that “[n]o person shall practice law in California unless the person is an active member of the State Bar.” Because Birbrower, a New York lawyer, was not admitted in California, the court found that he was engaged in the unauthorized practice of law, and therefore could not recover his attorney’s fees.

Recognizing that the practice of law has taken on a truly national (and indeed, international) dimension, and in response to decisions such as the foregoing, the ABA has offered to the states a practical solution to the increasing multijurisdictional nature of the practice of law and the need of attorneys to be able to represent their clients outside of their home jurisdiction. The ABA established the Commission on Multijurisdictional Practice to look broadly at this issue and, as well, to determine whether special rules should apply to lawyers who periodically travel to states where they are not licensed to represent parties in arbitration, mediation or other private ADR proceedings. The Commission determined that such rules were necessary. In its report, the Commission recognized that “lawyers commonly engage in cross-border legal practice,” and that “such practice is on the increase.” With respect to alternative dispute resolution, the Commission found:

In ADR proceedings as well, it is common for lawyers to render services outside particular states in which they are licensed. Sometimes, the parties choose to conduct the ADR proceeding in a state that has no relation to the parties or the dispute, because they prefer a neutral site.

As part of its report, the Commission recommended the adoption of a new rule of professional conduct that would speak to the modern practice of law.

The Commission proposed, and in August 2002, the ABA House of Delegates approved, important amendments to Rule 5.5 of the Model Rules. The amendments addressed the entire subject of multijurisdictional practice, and specifically to ADR. The amended rule would permit lawyers, on a temporary basis, to represent clients in arbitrations (and mediations and other ADR proceedings) in states where they are not licensed to practice law. The portion of Model Rule 5.5 addressing ADR is in subparagraph (c) (3). It states:

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

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

Model Rule 5.5(c)(3) became a part of the broader revisions to the Model Rules, completed by the ABA's Ethics 2000 Commission in February 2002. Thus, under Model Rule 5.5(c)(3), a lawyer would not afoul of rules prohibiting the unauthorized practice of law in a jurisdiction if the lawyer is admitted to practice in another jurisdiction and (1) on a temporary basis, (2) represents a party in an arbitration, mediation or other ADR proceeding, (3) that is reasonably related to the lawyer's practice in the jurisdiction where the lawyer is admitted to practice, and (4) the forum's rules do not require *pro hac vice* admission.

### **III. State Responses to Model Rule 5.5(c)(3)**

Since the release of the ABA's Ethics 2000 Commission report, virtually all of the states have reviewed their own ethics rules for lawyers. In fact, most states now have addressed multijurisdictional ADR practice issues.

The following section discusses each state's response to Model Rule 5.5(c)(3).<sup>6</sup>

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<sup>6</sup> The ABA Center for Professional Responsibility maintains a website that contains a variety of resources on multijurisdictional practice including a chart which tracks each state's implementation of the ABA's multijurisdictional policies: <http://www.abanet.org/cpr/mjp/home.html>.

*Alabama*

The Alabama Supreme Court, effective September 19, 2006, adopted a rule similar to Model Rule 5.5(c)(3), except it eliminates the requirement that the legal services “arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice.”<sup>7</sup>

*Alaska*

Effective April 15, 2009, the Alaska Supreme Court adopted new rules of professional conduct which include an identical version of the Model Rule 5.5(c)(3).<sup>8</sup>

*Arizona*

In May 2002, a member of the Arizona State Bar Committee on the Rules of Professional Conduct issued an informal opinion<sup>9</sup> concluding that, because the representation of a party in arbitration is the practice of law, a member of the Arizona bar who serves as an arbitrator would be assisting another in the unauthorized practice law if counsel is not admitted as an attorney in Arizona. This informal opinion was short lived, as the Arizona Supreme Court subsequently adopted Model Rule 5.5(c)(3).<sup>10</sup>

*Arkansas*

Effective May, 1, 2005, the Arkansas Supreme Court adopted a rule identical to Model Rule 5.5(c)(3).<sup>11</sup>

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[http://www.alabar.org/rulechanges/Rule%205.5\\_Rules%20of%20Professional%20Code\\_Unauthorized%20Practice%20of%20Law\\_Supreme%20Court%20order.pdf](http://www.alabar.org/rulechanges/Rule%205.5_Rules%20of%20Professional%20Code_Unauthorized%20Practice%20of%20Law_Supreme%20Court%20order.pdf)

<sup>8</sup> <http://www.courts.alaska.gov/sco/sco1680.pdf>.

<sup>9</sup> Informal Op. Request No. 2191.

<sup>10</sup> <http://www.myazbar.org/ethics/ruleview.cfm?id=51>.

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[http://courts.state.ar.us/rules/current\\_ark\\_prof\\_conduct/law\\_firms/profcond5\\_5.cfm](http://courts.state.ar.us/rules/current_ark_prof_conduct/law_firms/profcond5_5.cfm).

### *California*

Attorneys not admitted to practice in California may represent parties in arbitration proceedings in California if they prepare a certificate containing information prescribed by statute, obtain the approval of the arbitrator, and file the certificate with the State Bar of California.<sup>12</sup>

### *Colorado*

Effective January 1, 2003, the Colorado Supreme Court permitted out-of-state attorneys to practice law in Colorado. Rule 220 of the Colorado Rules of Civil Procedure permits an attorney licensed in another jurisdiction to practice law in Colorado so long as that attorney has not established domicile in Colorado and the attorney has not established a place for the regular practice of law in Colorado from which the attorney practices “Colorado law” or “accepts Colorado clients.”<sup>13</sup> So long as these conditions are satisfied an out-of-state attorney can represent parties in arbitrations in Colorado.

### *Connecticut*

Effective January 1, 2008, Rule 5.5 of the Connecticut Rules of Professional Conduct was amended to provide that a lawyer who is not admitted to practice in Connecticut, but who is admitted in another jurisdiction that accords similar privileges to Connecticut lawyers, may provide the legal services set forth in Model Rule 5.5(c)(3) on a temporary basis in Connecticut. This representation is permitted if the lawyer gives notice to the Statewide Bar Counsel prior to and at the conclusion of each representation and pays the fee prescribed by the Judicial Branch.<sup>14</sup> The Comments to the Rule state that the legal services in the arbitration must be “with respect to a matter that is substantially related to, or arises out of, a jurisdiction in which the lawyer is admitted. A variety of factors may evidence such a relationship. However, the matter, although involving other jurisdictions, must have a significant connection with the jurisdiction in which the lawyer is

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<sup>12</sup> See generally CAL. CIV. PROC. CODE §§ 1282-1284.3.

<sup>13</sup> <http://www.michie.com/colorado/lpExt.dll?f=templates&eMail=Y&fn=main-h.htm&cp=corules/2/3/290f%20>.

<sup>14</sup> <http://www.jud.ct.gov/Publications/PracticeBook/PB1.pdf>.

admitted to practice. A significant aspect 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 and the resulting legal issues involve multiple jurisdictions."

### *Delaware*

When the Delaware Supreme Court adopted a comprehensive new set of rules of professional conduct effective July 1, 2003, it included in those rules Model Rule 5.5 (c)(3).<sup>15</sup>

### *District of Columbia*

Rule 49 of the Rules of the District Columbia Court of Appeals permits attorneys not admitted in the District to engage in the temporary representation of parties in "no more than five (5) ADR proceedings in the District of Columbia per calendar year."<sup>16</sup>

### *Florida*

A "non-Florida lawyer" may appear in an arbitration in Florida for a client who resides in or has an office in the lawyer's home state or where the appearance arises out of or is reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. In all arbitration proceedings, except international arbitrations, prior to practicing pursuant to this rule, the non-Florida lawyer must file a verified statement with The Florida Bar and serve a copy of the verified statement on opposing counsel, if known. The verified statement must include certain information such as listing all jurisdictions where the lawyer is admitted to practice, a list of all arbitrations in which the lawyer has appeared in Florida during the preceding five years (confidential information may be excluded), and certain other information specific to the pending arbitration. A \$250 fee must also be paid to The Florida Bar.<sup>17</sup>

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<sup>15</sup> [www.courts.state.de.us/supreme](http://www.courts.state.de.us/supreme).

<sup>16</sup> [http://www.dcappeals.gov/dccourts/docs/DCCA\\_Rules.pdf](http://www.dcappeals.gov/dccourts/docs/DCCA_Rules.pdf).

<sup>17</sup> <http://www.floridasupremecourt.org/decisions/2005/sc04-135.pdf>. *In re Amendments to the Rules Regulating the Florida Bar and the Rules of Judicial Administration-Multijurisdictional Practice of Law*, 991 So. 2d 842 (Fla. 2008).

***Georgia***

On April 5, 2003, the Board of Governors of the Georgia Bar approved the Final Report of the State Committee on Multijurisdictional Practice. The Report recommended adoption of the revised Model Rules in their entirety, including Model Rule 5.5(c)(3). That rule was adopted by the Georgia Supreme Court on June 8, 2004.<sup>18</sup>

***Idaho***

Rule 5.5 of the Idaho Rules of Professional Conduct contains language similar to Model Rule 5.5(c)(3). It provides that an out-of-state lawyer may temporarily practice in Idaho if an ADR proceeding “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.”<sup>19</sup>

***Illinois***

On July 1, 2009, the Illinois Supreme Court amended its Rules of Professional Conduct, effective January 1, 2010. The amendments included the adoption of Model Rule 5.5(c)(3).<sup>20</sup>

***Indiana***

Effective since January 1, 2005, the Indiana Rules of Professional Conduct have included the identical version of Model Rule 5.5 (c) (3).<sup>21</sup>

***Iowa***

Since July 1, 2005, the Iowa Rules of Professional Conduct have included a rule identical to Model Rule 5.5(c)(3).<sup>22</sup>

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<sup>18</sup>[http://gabar.org/handbook/part\\_iv\\_after\\_january\\_1\\_2001\\_-\\_georgia\\_rules\\_of\\_professional\\_conduct/rule\\_55\\_unauthorized\\_practice\\_of\\_law\\_multijurisdictional\\_practice\\_of\\_law/](http://gabar.org/handbook/part_iv_after_january_1_2001_-_georgia_rules_of_professional_conduct/rule_55_unauthorized_practice_of_law_multijurisdictional_practice_of_law/)

<sup>19</sup> [http://www.isc.idaho.gov/rules/IRPC\\_all.doc](http://www.isc.idaho.gov/rules/IRPC_all.doc)

<sup>20</sup> <http://www.state.il.us/court/SupremeCourt/Rules/Amend/2009/070109.pdf>

<sup>21</sup> [http://www.in.gov/judiciary/rules/prof\\_conduct/prof\\_conduct.pdf](http://www.in.gov/judiciary/rules/prof_conduct/prof_conduct.pdf)

<sup>22</sup> <http://www.legis.state.ia.us/Rules/Current/court/courtrules.pdf>

***Kansas***

The Kansas Supreme Court has not adopted ABA Model Rule 5.5. The Kansas Rules of Professional Conduct include the prior version of the predecessor to Model Rule 5.5. That rule prohibits the practice of law in a jurisdiction where doing so would violate the regulation of the legal profession in the jurisdiction.<sup>23</sup> No Kansas court has held that the representation of a party in a private arbitration is not the practice of law. Rule 116 of the Kansas Rules Relating to District Courts pertaining to *pro hac vice* admission<sup>24</sup> has not been interpreted to apply to private arbitrations. Thus, currently in Kansas, an out-of-state attorney would not be permitted to represent a party in a private arbitration.

***Kentucky***

Effective July 15, 2009, the Kentucky Supreme Court amended its Rules of Professional Conduct to adopt a rule substantially similar to Model Rule 5.5(c)(3).<sup>25</sup>

***Louisiana***

Effective April 1, 2005, the Louisiana Supreme Court amended its rules regarding multijurisdictional practice to be identical with Model Rule 5.5(c)(3).<sup>26</sup>

***Maine***

The Maine Supreme Judicial Court has amended the Maine Rules of Professional Conduct, effective August 1, 2009. These rules incorporate Model Rule 5.5(c)(3).<sup>27</sup>

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<sup>23</sup> [http://www.law.cornell.edu/ethics/ks/code/KS\\_CODE.HTM](http://www.law.cornell.edu/ethics/ks/code/KS_CODE.HTM).

<sup>24</sup> <http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+District+Courts&r2=61>.

<sup>25</sup> <http://courts.ky.gov/NR/rdonlyres/AA868FA5-6B4B-4C20-A06C-D5C4FC0D1596/0/RevisedSCRuleseffective7152009.pdf>.

<sup>26</sup> [http://www.lasc.org/rules/orders/2005/ROPC5.5\\_8.5.pdf](http://www.lasc.org/rules/orders/2005/ROPC5.5_8.5.pdf).

<sup>27</sup> <http://mecle.com/M%20R%20Prof%20Cond/Rule%205-5.html>.

***Maryland***

The Maryland Court of Appeals, the state's highest court, has adopted a rule identical to Model Rule 5.5(c)(3).<sup>28</sup>

***Massachusetts***

The Massachusetts Supreme Judicial Court adopted the identical version of Model Rule 5.5(c)(3) effective January 1, 2007, as part of the Massachusetts Rules of Professional Conduct.<sup>29</sup>

***Michigan***

Effective September 1, 2008, the Michigan Supreme Court adopted Rule 8.126 of its Administrative Rules of Court regarding Temporary Admission to the Bar.<sup>30</sup> Although this Rule on its face only applies to appearances in "court or before an administrative tribunal or agency," it has been interpreted by the State Bar of Michigan to apply in arbitration as well. The rule limits an out-of-state attorney to appearing in no more than five cases annually, and makes the attorney's appearance subject to the discretion of the "court or administrative tribunal or agency." The out-of-state attorney must be associated with a Michigan attorney and submit a motion to the body before which the attorney is appearing. The Michigan attorney must send the motion and supporting affidavit to the Attorney Grievance Commission. The commission then notifies the tribunal if the out-of-state attorney has appeared in Michigan during the past year, and if so, how many times. Assuming compliance with the rule, the tribunal would enter an order granting the attorney permission to practice in that proceeding. Presently, Michigan's statute regulating the unauthorized practice of law provides that it does not apply to an out-of-state lawyer who is "temporarily in [Michigan] and engaged in a particular matter."<sup>31</sup>

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<sup>28</sup> <http://www.courts.state.md.us/rules/rodocs/153ro.pdf>.

<sup>29</sup> <http://www.massreports.com/courtrules/sjcrules.aspx#Rule3:07>. Prior to its adoption of ABA Model Rule 5.5(c)(3), the Massachusetts Supreme Judicial Court held that appearance by an attorney not admitted to practice in Massachusetts was not a ground on which to vacate an arbitration award. *Superadio Ltd. Partnership v. Winstar Radio Productions, LLC*, 844 N.E.2d 246 (Mass. 2006).

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<http://coa.courts.mi.gov/rules/documents/1Chapter8AdministrativeRulesofCourt.pdf#page=32>.

<sup>31</sup> Mich. Comp. Law. Ann. § 600.916.

***Minnesota***

On June 17, 2005, the Minnesota Supreme Court adopted amendments to its Rules of Professional Conduct incorporating Model Rule 5.5(c)(3).<sup>32</sup>

***Mississippi***

The Mississippi Rules of Professional Conduct have not been amended to include Model Rule 5.5(c)(3). The Mississippi Supreme Court has suggested in *dicta* that by participating in a private arbitration in Mississippi, an out-of-state attorney would be making an “appearance” within the meaning of Rule 46(b) of the Mississippi Rules of Appellate Procedure. The court stated:

A foreign attorney may further make an appearance in a Mississippi court by physically appearing at . . . an arbitration or mediation proceeding. . . . These actions require that the foreign attorney be admitted pro hac vice.<sup>33</sup>

In a recent article, the former chair of the Mississippi Bar’s Unauthorized Practice of Law Committee wrote that the “current status of the law in Mississippi regarding whether representation in a private arbitral proceeding is the unauthorized practice of law is unclear due to the lack of case law and the fact that the Mississippi Rules of Professional Conduct have not been revised to address this situation.”<sup>34</sup>

***Missouri***

Effective January 1, 2006, the Missouri Supreme Court adopted a rule identical to Model Rule 5.5(c)(3).<sup>35</sup>

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<sup>32</sup> <http://www.mncourts.gov/lprb/05mrpc.html#r55>.

<sup>33</sup> *In re Williamson*, 838 So. 2d 226, 235 (Miss. 2002).

<sup>34</sup> Jim Warren & Scott Murray, *Is Representation in an Arbitration Considered the Unauthorized Practice of Law in Mississippi?*, 79 MISS. L.J. MISSING SOURCES 44 (2009).

<sup>35</sup> <http://www.courts.mo.gov/sup/index.nsf/d45a7635d4bfd8f8625662000632638/a1a5ae5d76d936e586256fc200026b38?OpenDocument>.

***Montana***

Rule IV of the Rules for Admission to the Montana Bar provide that an attorney who is admitted in another jurisdiction may appear “pro hac vice in any action or proceeding, if an attorney admitted to practice in the courts of Montana is associated as attorney of record.”<sup>36</sup> Although the rule does not specifically speak to private arbitrations, knowledgeable attorneys in Montana state that best practices in Montana would be for out-of-state attorneys in private arbitrations to follow this rule. The rule requires that an application for *pro hac vice* admission be filed with the State Bar of Montana. Rule IV(C) provides that except “upon a showing of good cause, no attorney or firm may appear pro hac vice in more than two actions or proceedings in any state court or administrative agency in Montana.” Because this limitation applies to “actions or proceedings in any state court or administrative agency,” it is unclear whether this restriction would apply to private arbitrations.

***Nebraska***

Section 3-505.5 of the Nebraska Rules of Professional Conduct contains a provision identical to Model Rule 5.5(c)(3).<sup>37</sup>

***Nevada***

Effective May 1, 2006, the Nevada Supreme Court amended its Rules of Professional Conduct addressing multijurisdictional practice but not adopting the language of Model Rule 5.5(c)(3). Nevada Rule 5.5 permits lawyers licensed in other jurisdictions to practice in Nevada so long as the “lawyer is acting with respect to a matter that is incident to work being performed in a jurisdiction in which the lawyer is admitted, provided that the lawyer is acting in [Nevada] on an occasional basis and not as a regular or repetitive course of business in this jurisdiction.”<sup>38</sup> This rule appears to cover representation in arbitration. The Nevada Supreme Court also adopted a special rule for ADR proceedings that “are court-annexed or court ordered, or that are mandated by statute or administrative rule.”<sup>39</sup> Under Nevada Supreme Court Rule 42, an out-of-

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<sup>36</sup> <http://www.montanabar.org/displaycommon.cfm?an=1&subarticlenbr=7>.

<sup>37</sup> <http://court.nol.org/rules/pdf/Ch3Art5.pdf>.

<sup>38</sup> <http://www.leg.state.nv.us/courtrules/RPC.html>.

<sup>39</sup> <http://www.leg.state.nv.us/courtrules/SCR.html#SCRRule42>.

state lawyer must file a written application to appear as counsel in ADR proceedings (similar to a *pro hac vice* application), and may do so only upon approval by the “court, arbitrator, mediator or . . . hearing officer.” The out-of-state lawyer also must associate as counsel with a Nevada lawyer.

### *New Hampshire*

Effective January 1, 2008, the New Hampshire Rules of Professional Conduct incorporated a rule identical to Model Rule 5.5(c)(3).<sup>40</sup>

### *New Jersey*

The New Jersey Rules of Professional Conduct contain a provision similar to Model Rule 5.5(c)(3). It provides that a lawyer admitted in another jurisdiction may, in New Jersey, represent “a party to a dispute by participating in arbitration, mediation or other alternate or complementary dispute resolution program, [if] the representation is on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice, and the dispute originates in or is otherwise related to a jurisdiction in which the lawyer is admitted to practice.”<sup>41</sup>

### *New Mexico*

Rule 16-505 of the New Mexico Rules of Professional Conduct incorporates the identical version of Model Rule 5.5(c)(3).<sup>42</sup>

### *New York*

Although the New York State Bar Association has recommended adoption of Model Rule 5.5(c)(3), when the state’s professional conduct rules were recently amended, the existing version of Rule 5.5 (which is based on the ABA’s former Model Rule 5.5) was not changed.<sup>43</sup>

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<sup>40</sup> <http://www.courts.state.nh.us/supreme/orders/20072507.pdf>.

<sup>41</sup> <http://www.judiciary.state.nj.us/rules/apprpc.htm#x5dot5>.

<sup>42</sup> <http://www.conwaygreene.com/nmsu/lpext.dll?f=templates&fn=main-h.htm&2.0>.

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[http://www.nycourts.gov/rules/jointappellate/NY%20Rules%20of%20Prof%20Conduct\\_09.pdf](http://www.nycourts.gov/rules/jointappellate/NY%20Rules%20of%20Prof%20Conduct_09.pdf).

However, the Association of the Bar of the City of New York has adopted the report of its Arbitration Committee which has opined that the representation of a party in a New York arbitration by a lawyer admitted to practice in another jurisdiction is not the practice of law.<sup>44</sup> This conclusion is supported by a series of New York federal court decisions.<sup>45</sup>

### *North Carolina*

The North Carolina Supreme Court approved amendments to the North Carolina Rules of Professional Conduct, effective March 1, 2003, adopting Model Rule 5.5 (c)(3).<sup>46</sup>

### *North Dakota*

Under the multijurisdictional practice rules adopted by the North Dakota Supreme Court, an out-of-state attorney may represent a party in an arbitration in North Dakota so long as the out-of-state lawyer associates with a “lawyer admitted to practice in [North Dakota] who actively participates in the representation of the client in the matter, transaction or proceeding.”<sup>47</sup>

### *Ohio*

The Ohio Supreme Court has adopted a multijurisdictional practice rule identical to Model Rule 5.5(c)(3).<sup>48</sup>

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<sup>44</sup> Committee on Arbitration, Association of the Bar of the City of New York, *Unauthorized Practice of Law and the Representation of Parties in New York by Lawyers Not Licensed to Practice in New York*, 63 THE RECORD 700 (2008).

<sup>45</sup> See generally *Prudential Equity Group, LLC v. Ajamie*, 538 F. Supp. 2d 605 (S.D.N.Y. 2008) (participation by a non-New York attorney in a New York arbitration is not the unauthorized practice of law); *Seigel v. Bidas Sociedad Anomina Petrolera Indus. Y Commercial*, No. 90 Civ. 6108 (RJW) 1991 U.S. Dist. LEXIS 11455 (S.D.N.Y. Aug. 19, 1991) (representation of a party in a New York arbitration proceeding by a lawyer admitted to practice in another jurisdiction is not the unauthorized practice of law); *Williamson, P.A. v. John D. Quinn Const. Corp.*, 537 F. Supp. 613 (S.D.N.Y. 1982) (an unlicensed attorney could recover fees for representing a party in an arbitration because arbitration is not the practice of law).

<sup>46</sup> [www.ncbar.com/home/clean\\_rules.asp](http://www.ncbar.com/home/clean_rules.asp).

<sup>47</sup> <http://www.ndcourts.com/rules/Conduct/frameset.htm>.

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<http://www.supremecourt.ohio.gov/LegalResources/Rules/ProfConduct/profConductRules.pdf>.

### **Oklahoma**

Effective January 1, 2008, the Oklahoma Rules of Professional Conduct incorporated Model Rule 5.5(c)(3).<sup>49</sup>

### ***Oregon***

The Oregon Rules of Professional Conduct have a provision identical to Model Rule 5.5(c)(3).<sup>50</sup>

### ***Pennsylvania***

The Pennsylvania Rules of Professional Conduct contain a rule identical to Model Rule 5.5(c)(3).<sup>51</sup>

### ***Rhode Island***

The Rhode Island Rules of Professional Conduct contain a rule identical to Model Rule 5.5(c)(3).<sup>52</sup>

### ***South Carolina***

The South Carolina Rules of Professional Conduct contain a provision identical to ABA Rule 5.5(c)(3).<sup>53</sup> The comments to the rule, however, state the following:

For the purposes of this rule, a lawyer who is not admitted to practice in South Carolina who seeks to provide legal services pursuant to Rule 5.5(c)(3) in more than three matters in a 365-day period shall be presumed to be providing legal services on a regular, not temporary, basis. A lawyer providing legal services pursuant to paragraph (c)(3) must comply with the requirements of Rule 404, SCACR.

Under Rule 404 of the South Carolina Rules Governing the Practice of Law, an application to be admitted *pro hac vice* must be filed with the

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<sup>49</sup> <http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=448989>

<sup>50</sup> [http://www.osbar.org/\\_docs/rulesregs/orpc.pdf](http://www.osbar.org/_docs/rulesregs/orpc.pdf)

<sup>51</sup> <http://www.padisciplinaryboard.org/documents/RulesOfProfessionalConduct.pdf>

<sup>52</sup> [http://www.courts.ri.gov/supreme/pdf-files/Rules\\_Of\\_Professional\\_Conduct.pdf](http://www.courts.ri.gov/supreme/pdf-files/Rules_Of_Professional_Conduct.pdf)

South Carolina Supreme Court Office of Bar Admissions along with a \$250 fee.<sup>54</sup>

### *South Dakota*

The multijurisdictional provision of the South Dakota Rules of Professional Conduct with respect to ADR proceedings is identical to Model Rule 5.5 (c)(3), with the addition that any out-of-state attorney “obtains a South Dakota sales tax license and tenders the applicable taxes.”<sup>55</sup>

### *Tennessee*

Effective January 1, 2010, the Tennessee Rules of Professional Conduct will contain a provision corresponding exactly to Model Rule 5.5(c)(3).

### *Texas*

The Supreme Court of Texas has not adopted Model Rule 5.5(c)(3). Although Texas has a broad definition of the practice of law, currently no Texas court decision or rule speaks directly to the question of whether an out-of-state attorney may temporarily represent a party in a private arbitration in Texas. Historically, the Supreme Court of Texas Unauthorized Practice of Law Committee, which is charged with preventing the unauthorized practice of law in Texas, has not challenged as the unauthorized practice of law, the representation of a party in a private arbitration in Texas by an attorney authorized to practice in another jurisdiction.<sup>56</sup>

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<http://www.judicial.state.sc.us/courtReg/displayRule.cfm?ruleID=407.0&subRuleID=RULE%205%2E5&ruleType=APP>

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<http://www.judicial.state.sc.us/courtReg/displayRule.cfm?ruleID=404.0&subRuleID=&ruleType=APP>

<sup>55</sup> <http://www.sdbar.org/Rules/rules.shtm>

<sup>56</sup> Telephone interview with Leland C. de la Garza, Chair, Supreme Court of Texas Unauthorized Practice of Law Committee (Dec. 1, 2009).

*Utah*

The Utah Rules of Professional Conduct include Model Rule 5.5(c)(3).<sup>57</sup>

*Vermont*

The Vermont Rules of Professional Conduct include Model Rule 5.5(c)(3).<sup>58</sup> The Comments to the rule provide a very useful explanation of the purpose of the rule:

It is generally recognized that, in the ADR context, there is often a strong justification for choosing a lawyer who is not admitted to practice law in the jurisdiction in which the proceeding takes place but who has an ongoing relationship with the client, who is admitted to practice in the jurisdiction in which the client is located, or has developed a particular knowledge or expertise that would be advantageous in providing the representation. Admission to practice law in the jurisdiction in which the proceeding takes place may be relatively unimportant, in part, because that jurisdiction may have no relation to the law governing the proceeding or to the dispute. Unlike litigation, in ADR parties may select the site of the proceeding simply on the basis of convenience. At times, as in the case of international arbitrations, a site is chosen precisely because it has no connection to either party or to the dispute. Thus, in ADR proceedings, the in-state lawyer is not ordinarily better qualified than other lawyers by virtue of greater familiarity with state law, state legal processes and state institutions. Further, as noted by the ABA Section of Litigation in its comments to the Commission, “Clients have important considerations in ADR, which include confidentiality, consistency, uniformity, costs, and convenience. After all, non-binding ADR procedures usually require client “buy in” to

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<sup>57</sup> [http://www.utcourts.gov/resources/rules/ucja/ch13/5\\_5.htm](http://www.utcourts.gov/resources/rules/ucja/ch13/5_5.htm).

<sup>58</sup> <http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATED-JUN1709-VRPC.pdf>.

succeed. Denying a client her preferred counsel could hamper early ADR efforts and impede prompt resolution of disputes.

### *Virginia*

Rule § 6:2-5.5 of Virginia's Rules of Professional Conduct is virtually identical Model Rule 5.5(c)(3).<sup>59</sup>

### *Washington*

Since 2006 the Washington State Supreme Court Rules of Professional Conduct have included Model Rule 5.5 (c)(3).<sup>60</sup>

### *West Virginia*

The Supreme Court of Appeals of West Virginia has not adopted Model Rule 5.5(c)(3). Rule 8 of the West Virginia Rules of Admission to the Practice of Law requires a *pro hac vice* application for any out-of-state attorney wishing to practice "in a particular action, suit, proceeding or other matter in any court of [West Virginia] or before any judge, tribunal or body" of the state.<sup>61</sup> A correct inference from the rule is that no such application is required for participation in a private arbitration.<sup>62</sup>

### *Wisconsin*

Effective July 1, 2007, the Wisconsin Supreme Court Rules of Professional Conduct for Attorneys, have included a provision identical to Model Rule 5.5(c)(3) (SCR 20:5.5).<sup>63</sup>

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<sup>59</sup><http://leg1.state.va.us/cgi-bin/legp504.exe?000+scr+vscr-6Z2-5.5>

<sup>60</sup>

[http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=ga&set=RPC&ruleid=garp5.5](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=RPC&ruleid=garp5.5)

<sup>61</sup> <http://www.state.wv.us/wvsca/Bd%20of%20Law/lawprac.htm#Rule> 8.0. Admission *pro hac vice*.

<sup>62</sup> Telephone interview with Mark Hayes, Chair, West Virginia State Bar Unlawful Practice of Law Committee (Nov. 30, 2009).

<sup>63</sup> <http://www.legis.state.wi.us/rsb/scr/5200.pdf>.

*Wyoming*

Although the Wyoming Rules of Professional Conduct for Attorneys at Law do not include ABA Model Rule 5.5(c)(3), Wyoming has adopted a similar rule which prohibits out-of-state attorneys from engaging in the “systematic and continuous presence in this jurisdiction for the practice of law.” Presumably, to the extent representation of a party in an arbitration could not reasonably be construed to constitute the systematic and continuous presence in Wyoming, such representation would be permissible.

**IV. Conclusion**

The area of multijurisdictional practice is rapidly changing to adapt to the greater fluidity in economic life. Keeping up with these changes is essential for attorneys whose practice calls upon them to travel to different states to participate in private arbitrations.