

RISKS AND ETHICAL CONSIDERATIONS ASSOCIATED WITH MULTI-JURISDICTION PRACTICE (MJP)

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Introduction

- Technology makes it easier for attorneys to engage clients from virtually any location in the world.
- Clients increasingly operate globally.
- Attorneys are often called upon to negotiate, advise, litigate, and render legal services to clients in jurisdictions where that attorney is not licensed.
- As a result, attorneys need to understand risks associated with Multijurisdictional Practice of Law (MJP) and unauthorized practice of law (UPL).

History

- Most states do not distinguish Unauthorized Practice of Law (UPL) by non-lawyers and by lawyers not licensed in a particular jurisdictions.
- Charges arising from UPL and Multijurisdictional Practice of Law (MJP) are rare. They typically involve:
 - License has been suspended in the particular jurisdiction.
 - Fee dispute between attorney and client located in another jurisdiction.
 - Out-of-state lawyer systematically and continuously provides legal services in a particular jurisdiction without being admitted there.

Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court of Santa Clara

- Controversial 1998 California Supreme Court decision
- Court held that New York lawyers who provided corporate counseling and filed an arbitration demand in California for a California-based client could not collect their fees because the lawyers had violated California's misdemeanor UPL statute.
- Implications of Birbrower caused an uproar among transactional lawyers and led to regulatory changes in California and significant changes to Model Rules of Professional Conduct 5.5 and 8.5.

POST BIRBROWER ABA RULES

- ABA Model Rule 5.5 states that an unadmitted lawyer cannot “establish an office or other systematic and continuous presence” or “hold out to the public or otherwise represent that the lawyer is admitted to practice law” in the jurisdiction.

POST BIRBROWER ABA RULES cont...

- ABA Model Rule 5.5(c) "Safe Harbor" expressly allows unadmitted lawyers to provide legal services on a "temporary basis" if they
 - associate with an admitted lawyer;
 - are authorized to appear by a tribunal or reasonably expect to be so authorized;
 - participate in an arbitration, mediation, or similar proceeding, provided the services relate to the lawyer's admitted jurisdiction and pro hac vice admission is not required; or
 - when the legal services are "reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted."

POST BIRBROWER ABA RULES cont...

- ABA Model Rule 5.5(d)(2) allows an unadmitted lawyer to maintain “a systematic and continuous” presence in the jurisdiction so long as the services offered are authorized by federal or other law.

ABA MODEL RULES 5.5 / WISCONSIN - SCR 20:5.5 - Unauthorized Practice of Law; Multijurisdictional Practice of Law

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

- (1) except as authorized by this rule or other law, establish an office or maintain a systematic and continuous presence in this jurisdiction for the practice of law; or
- (2) hold out to the public or otherwise represent that the lawyer is admitted to the practice of law in this jurisdiction.

(c) Except as authorized by this rule, a lawyer who is not admitted to practice in this jurisdiction but who is admitted to practice in another jurisdiction of the United States and not disbarred or suspended from practice in any jurisdiction for disciplinary reasons or for medical incapacity, may not provide legal services in this jurisdiction except when providing services on an occasional basis in this jurisdiction that:

- (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter; or
- (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; or
- (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; or
- (4) are not within subsections (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.

ABA MODEL RULES 5.5 / WISCONSIN - SCR 20:5.5 - Unauthorized Practice of Law; Multijurisdictional Practice of Law

(d) A lawyer admitted to practice in another United States jurisdiction or in a foreign jurisdiction, who is not disbarred or suspended from practice in any jurisdiction for disciplinary reasons or medical incapacity, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

- (1) are provided to the lawyer's employer or its organizational affiliates after compliance with SCR 10.03 (4) (f), and are not services for which the forum requires pro hac vice admission; or
- (2) are services that the lawyer is authorized to provide by federal law or other law or other rule of this jurisdiction.

(e) A lawyer admitted to practice in another jurisdiction of the United States or a foreign jurisdiction who provides legal services in this jurisdiction pursuant to sub. (c) and (d) above shall consent to the appointment of the Clerk of the Wisconsin Supreme Court as agent upon whom service of process may be made for all actions against the lawyer or the lawyer's firm that may arise out of the lawyer's participation in legal matters in this jurisdiction.

AVOIDING UNAUTHORIZED PRACTICE OF LAW IN A MULTIJURISDICTIONAL PRACTICE

- Will a particular client regularly request that you provide legal advice for matters specific to a particular state where you are not licensed?
- Do many of your clients operate outside of your licensed state?
- Do you actively seek out clients outside of your jurisdiction?

AVOIDING UNAUTHORIZED PRACTICE OF LAW DEFENSE TO CLAIM FOR FEES

- Engagement Letter.
 - Limit the scope of engagement to matters located in your jurisdiction.
 - Advise clients to retain local counsel on matters that fall outside of where you are licensed.
 - Indicate that clients may be required to work with local counsel on certain matters outside of your jurisdiction.
- Advise client to retain local counsel or secure local counsel on their behalf in the appropriate jurisdiction for such matters.

Hypothetical

- Los Angeles based film distributor has retained you to assist with negotiating contracts for financing, producing and distributing a movie they will be producing in Wisconsin, Illinois and Michigan.
- You are licensed only in Wisconsin.

Hypothetical cont...

- Employment agreements with client's employees that will work out of their main office in Los Angeles.
- Employment and independent contractor agreements for cast and crew that will operate in Wisconsin, Illinois and Michigan.
- Formation of production company that will be owned by the distributor and investors.
- Financing agreements between investors located throughout the United States and China.
- Trademark and copyright filings for production company name, script and film.
- Chain of title opinion.
- Distribution agreements for finished film.

Questions?

Thank You!

This presentation provides information of a general nature. None of the information contained herein is intended as legal advice or opinion relative to specific matters, facts, situations or issues. Additional facts and information or future developments may affect the subjects addressed in this presentation. You should consult with a lawyer about your particular circumstances before acting on any of this information because it may not be applicable to you or your situation.