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# Revisiting the Boundaries of the Multijurisdictional Practice of Law

**BY CHRISTOPHER D. CARUSONE**
*Special to the Legal*

It has been nearly 18 years since the American Bar Association (ABA) House of Delegates approved the Commission on Multijurisdictional Practice's Report 201B proposing amendments to Model Rule of Professional Conduct 5.5 to address the permissible boundaries of the multijurisdictional practice of law. These amendments intended to clarify (on a national level) when an attorney licensed in one jurisdiction can engage in conduct constituting the practice of law in another jurisdiction without a license in that jurisdiction or special admission to handle a particular case pro hac vice.

The amendments to Rule 5.5 were absolutely necessary nationwide, but the practices they codified were not uniquely groundbreaking. The commission's report accompanying the amendments readily acknowledged that it drew upon the prior work of many other ABA entities, state and local bar associations, and the Restatement (Third) of the Law Governing Lawyers Section 3(3).

**CHRISTOPHER D. CARUSONE** *is chair of the government law and regulatory affairs group and the Harrisburg office managing partner at Cohen Seglias Pallas Greenhall & Furman. Carusone can be reached at ccarusone@cohenseglias.com and 717-480-5306.*

Indeed, the Pennsylvania Bar Association (PBA) had opined on the permissible boundaries of the multijurisdictional practice of law as far back as 1990. (See PBA Committee on Legal Ethics and Professional Responsibility Formal Opinion No. 90-02, published March 2, 1990.)

In most respects, the ABA's goals of establishing a single, national standard were achieved. Indeed, according to the ABA, as of 2016, 47 states adopted language identical or similar to Rule 5.5. This includes Pennsylvania, which amended Pa.R.P.C. 5.5 in 2004. That being said, the ABA reserved at least one important question presented by the language of Rule 5.5 for judicial interpretation. Unfortunately, in the 18 years since, there has been no judicial guidance on this question, at least in Pennsylvania.

Rule 5.5(b) prohibits an attorney not admitted in Pennsylvania from "establishing an office or other systematic and continuous presence in this jurisdiction for the practice of law" or "holding out to the public or otherwise representing that the lawyer is admitted to practicing law in this jurisdiction" unless otherwise authorized by rule or law. Comment 4 explains that "presence may be systematic and continuous even if the lawyer is not physically present here." On the other hand, Rule 5.5(c)

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permits a lawyer licensed outside of Pennsylvania, who is not otherwise disbarred/suspended from practice, to "provide legal services on a temporary basis in this jurisdiction" in at least four enumerated circumstances. Comment 6 provides that there is "no single test" for determining what constitutes the provision of legal services on a temporary basis, and that "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." See also Pa.B.A.R. 302 (providing for a limited in-house corporate counsel license if counsel performs legal services "on more than a temporary basis" or "maintains an office or other systematic or continuous presence in this commonwealth").

So when does the provision of legal services on a "temporary basis" cross the line into establishing a "systematic and continuous presence" in Pennsylvania? In the absence of any judicial interpretation to the contrary, the answer appears to lie in the surrounding language of Rule 5.5(b). It is no coincidence that the phrase "systematic and continuous presence" follows the word "office" in the same sentence, suggesting that an attorney who maintains the functional equivalent of a law practice in Pennsylvania (with or without the walls) has established a "systematic and continuous presence" here. This interpretation is consistent with the Commission's Report at 3 ("Nothing in the proposed rule would authorize lawyers to open an office or otherwise establish a permanent law practice in states where they are not licensed or otherwise authorized to do so."). That is a far cry from, for example, an attorney barred in another jurisdiction from answering questions (even on a recurring basis) from similarly situated clients in Pennsylvania in the attorney's specific area of expertise.

This interpretation is further reinforced by one of the enumerated exceptions allowing for the provision of legal services on a temporary basis that "arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice." Comment 14 instructs that this relationship can be established by examining a number of factors, such as those related to the client (previously represented by the lawyer; client has substantial contacts in lawyer's home jurisdiction), the matter (significant connection with home jurisdiction, aspects of matter involve home jurisdiction, matter involves numerous jurisdictions to include home jurisdiction), and/or the lawyer involved ("recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally uniform, foreign, or international law"). None of these factors appear to require the establishment of a physical or virtual law practice in Pennsylvania.

Luckily, there is not a single reported case of an attorney licensed in another jurisdiction being prosecuted in Pennsylvania for the unauthorized practice of law under 42 Pa.C.S. Section 2524 for crossing the line established by Rule 5.5. Nor is there any record of the imposition of discipline in such a situation by the Disciplinary Board of the Pennsylvania Supreme Court. That being said, lawyers whose practices are multijurisdictional in nature are advised to tread carefully in these uncharted waters, at least until such time as more definitive guidance is issued. •


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