

Professionalism Committee

David W. Long, Chair

Multijurisdictional Practice

Submitted by Mike Harrell

The recent revisions to the Unauthorized Practice of Law rule 5.5 of the Rules of Professional Conduct greatly expand the ability of attorneys licensed outside the state of North Carolina to "practice" law in this state. The revisions to the rules are particularly helpful to transactional attorneys. *See generally* Rule 5.5(c). These recent revisions to the rule puts North Carolina in the forefront of those jurisdictions embracing the concept of multijurisdictional practice or "MJP." Given the increase of interstate commerce and the increasing likelihood of businesses operating on national and international levels, MJP is increasingly attractive to clients who would like to have one set of attorneys handle their business in a variety of locations.

But the advent of MJP raises certain professionalism issues that may or may not actually come to pass. These issues include the following:

(1) MJP makes the "enforcement" of professionalism more difficult. To some extent professional mores of conduct are "enforced" through the practices and customs of the local bar. If an out-of-state practitioner is not exposed to those practices and customs, then presumably that out-of-state practitioner would be more likely to be ignorant of or simply not care about such practices and customs of professionalism. Practically it is difficult if not impossible for a local effort like the WCBA/10th Judicial District's Professionalism Support Initiative to reach out to out-of-state attorneys who routinely violate North Carolina's standards of professionalism.

(2) MJP may promote a "lowest common denominator" uniform code of professionalism. If attorneys can practice in multiple jurisdictions, then the habits of one particular bar may adversely affect those of another bar. The eventual end result of MJP may be one inchoate mass of practices and

mores that draw on the worse of each jurisdiction's practices. If there is a "uniform" code of conduct, does this not suggest that eventually the states will lose their authority as licensing institutions?

(3) MJP could allow those individuals who are unable to pass the North Carolina bar to pass the bar of neighboring jurisdictions and then provide services "across the border." This would dilute the effect of our own state bar to hold North Carolina practitioners to a particular level of competence and practice.

(4) The implementation of MJP could lead to the weakening if not elimination of the *pro hac vice* requirement for out-of-state litigators. As noted above, the revisions to Rule 5.5 are aimed primarily at transactional attorneys and not litigators. Out-of-state litigators still must obtain admission under *pro hac vice* requirements and have local counsel appear with them in court. But if the premise of MJP is that there is

more readily available to transactional attorneys a common body of knowledge, then can't the same argument be made with respect to litigators? After all, local rules of practice for almost any jurisdiction are available on the internet and through computerized research services. If a transactional attorney does not need a "local" assistant, then why does a litigator need one?

It may be that these concerns do not come to pass. It would be prudent, however, to at least pause and examine whether or not any of these concerns are evident a few years after the passage of the revisions to Rule 5.5.

Good sources of information concerning MJP are available on crossingthebar.com and acca.com, and the author is indebted to both of these sources for information contained in this article.

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