MULTI-JURISDICTIONAL ISSUES IN ESTATE PLANNING, INCLUDING COMMUNITY PROPERTY

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I. Introduction

A. Multi-jurisdictional practice has become a way of life for most estate planning lawyers, whether they have chosen it or not.

B. Expectations of increasingly mobile clients, expanding businesses, children who no longer stay close to home, and the increasing availability of resources on the Internet produce both opportunities and challenges for the estate planning attorney.

C. This outline and the accompanying presentation will deal with the many problems created when an attorney works with clients or handles matters in one or more jurisdictions other than ones in which the attorney is licensed. The outline will summarize the many issues and arguments both for and against multi-jurisdictional practice. Many authors have already covered various aspects of this issue in quite some detail. A list of authorities is attached. A number of these authorities deal with multi-jurisdiction practice in far more detail, especially Professor Jeffrey A. Schoenblum’s two-volume treatise, Multistate and Multinational Estate Planning, which will be cited further.

D. Situations may involve circumstances where the client has property in another state or where the client has moved to another state. It may also involve dealing with family members of the client who live in another state.

E. Ethical issues are involved, including the unauthorized practice of law. The "M" word (Malpractice) also comes into play. This outline and the presentation will also cover a number of suggestions for possible ways to avoid both ethical problems and malpractice.

F. This outline and the presentation will also cover certain basic principles of multi-jurisdictional estate planning that apply to clients whether or not States allow multi-jurisdictional planning.

G. This outline and the presentation will specifically address Multi-state practice. Multinational practice is excluded from coverage, not that it is any less of an issue.

H. The American Bar Association has appointed a Commission on Multi-Jurisdictional Practice. This Commission has been charged with the responsibility of preparing a report and recommendations on this topic for consideration by the American
II. Unauthorized Practice of Law

A. The most significant issue with regard to multi-jurisdictional practice is clearly the unauthorized practice of law.

B. Each State has its own rules governing the unauthorized practice of law. While there are many differences among the individual State statutes, they uniformly provide that three (3) different groups are prohibited from practicing law within that jurisdiction. These three groups include:

1. Those who are not licensed to practice law in any jurisdiction,

2. Those who have been disbarred or suspended from the practice of law, and

3. Those who are licensed and in good standing to practice law in a jurisdiction other than the state governed by the statute (and are not also licensed in that State).

C. Much criticism has been directed at the restrictive nature of these State statutes, even though many of these statutes follow either the American Bar Association Model Code of Professional Responsibility or the American Bar Association Model Rules of Professional Conduct. The criticism is primarily targeted at the grouping of attorneys in good standing in their particular states in the same category as disbarred or suspended attorneys and laypersons.

D. Each State has always had the power and authority to regulate the practice of law within that jurisdiction and to determine who will be authorized to practice law in that jurisdiction.

E. Modern technology and the increasing mobility of the population are arguments used by those who would prefer at least some adjustment to the unauthorized practice of law rules. Of course, there is also criticism that the current unauthorized practice of law rules simply create a monopoly within each jurisdiction that restricts competition.

F. The response on the part of the individual States is that they have the responsibility to protect residents of their State from practitioners who either don’t know

Bar Association House of Delegates in August 2002. It has been conducting open meetings across the country for the last several months. Additional meetings will be scheduled (including two days at the ABA Annual Convention in Chicago in August 2001). A reference to the website for the Commission is included with the list of Authorities attached to this outline. At that website is an even more exhaustive list of resources and articles on this subject.
the law of that particular State or totally lack the training and experience to recognize key legal issues. A key argument is also that the State has the responsibility of making sure that those who represent others in the judicial system are familiar with the local rules and procedures. Another key argument on behalf of the present system is that the State is charged with the responsibility for enforcing discipline within the Bar. A practitioner who is not a member of the Bar may be able to avoid discipline for improper acts within the boundaries of the State.

G. The arguments in favor of modifying the unauthorized practice of law rules where the practitioner is an attorney licensed and in good standing in another state include the fact that the attorney will have met admission requirements in the home jurisdiction which are very similar to the requirements and standards of the other jurisdiction. Proponents of this approach can also argue that all attorneys have received education and training that is very similar in nature. Certainly, attorneys are trained to recognize legal issues and deal with them. A lack of knowledge of local rules and procedures is not nearly as important for estate planners and other transactional attorneys. Estate planning attorneys can also argue that a significant portion of the knowledge required for them to practice is federally based. It is also possible that most attorneys would be subject to discipline in their home States for any improper conduct in another State.

H. Proponents of the existing rules argue that the pro hac vice exception to the general prohibition affecting attorneys licensed elsewhere provides adequate opportunity for these other attorneys to practice where necessary in the regulating State. Estate planning and other transactional attorneys can argue that the pro hac vice motion has very little usefulness for them since it is entirely related to a court action in process. Most transactional legal work is done outside the court system.

I. Sanctions for the unauthorized practice of law vary from state to state and, in fact, are irregularly enforced. The primary sanction seems to be rejection of any claim for fees in the jurisdiction. The primary recent case seems to be Birbrower, Montalbano, Condon & Frank, P.C. v. The Superior Court of Santa Clara County, 17 Cal.4th 119, 949 P.2d 1 (Cal. 1998) (cert. denied 525 U.S. 920 (1998)). See also Spivak v. Saks, 16 N.Y.2d 162, 211 N.E.2d 329 (N.Y. 1965), 263 N.Y.2d 953 (N.Y. 10/21/65), another often-sited case, although not a current one. Several other states have also proceeded along the same lines of denying fees to out-of-state attorneys who, apparently, have violated the unauthorized practice of law rules.

J. Other sanctions for violating the unauthorized practice of law rules do exist. Criminal sanctions can be imposed, and there are other remedies such as injunctive relief. Any kind of criminal penalty could lead to disbarment in the home state.

K. One of the ways to avoid the unauthorized practice of law rules is to associate local counsel. It seems to be clear, however, that the local counsel must participate in the engagement and be something more than a figurehead. This, of
course, has its own problems. It could greatly increase the fee to the client, and there are issues of malpractice liability for the out-of-state attorney based on actions of local counsel.

L. It should be noted that most states have little resources to enforce the unauthorized practice of law rules. Unfortunately for most attorneys, it is major accounting firms like Arthur Andersen who can afford to beat the system. This is something that firm demonstrated when, in 1998, the Texas State Bar accused them of unauthorized practice of law. Eventually, the Texas State Bar backed down.

III. Malpractice

A. This is a topic that most attorneys would like to avoid. Unfortunately, the chances of a malpractice proceeding are greatly multiplied when an attorney licensed in one state attempts to “practice law” in another jurisdiction. This may be truer of smaller engagements such as preparing deeds or giving “simple” advice than in more complicated areas (where the attorney would very likely engage local counsel and take other steps to ensure the best representation for the client).

B. Most of the discussion concerning malpractice in the multi-state environment involves procedure. Jurisdiction is an issue, but so is the conflict of laws.

C. The assumption can be made that the forum for such an action will be the state in which the attorney is not licensed. However, the question of which state’s substantive law will be controlling is far more complicated. In general, there does not seem to be any clear agreement about whose state law will be applied. The Restatements (First and Second) of the Conflict of Laws are certainly important. However, the Restatement (Second) differs significantly from the Restatement (First) in its approach to choosing the appropriate law. A significant factor is whether the action is brought under tort law or under contract law. In addition, there are many theories regarding choice of law which each have their own following. Also, individual courts have set their own standards.

D. In addition to the matter of which state’s substantive law will be applied is the issue of which State’s Statute of Limitations will be applied. The underlying law is no less complicated in the statute of limitations area. In addition to the Restatement (First and Second) of the Conflict of Laws, there are also two Uniform laws that have been adopted in certain States. Each of these proposes a different theory for application of the Statute of Limitations and for such other matters as tolling the statute in certain circumstances.
E. Unfortunately, the cases show an extremely high likelihood that the Court in the Forum State will apply its own local law in most instances. This will work to the advantage of the plaintiffs in certain situations and work to the advantage of the defendant attorney in other circumstances. Consequently, forum-shopping characterizes this area.

F. When an attorney must undertake a matter involving the law of another State, it is quite common for the attorney to engage local counsel. This seems to clearly be the "safe" way to handle the matter. However, that decision may not be as "safe" as it seems. The general trend of the law is that the principal attorney remains completely liable for negligence or even incompetence on the part of local counsel. Therefore, there is a duty to exercise due care in selecting local counsel. There is also apparently a duty to supervise local counsel (even though local counsel, under the unauthorized practice of law rules, must be significantly engaged in the representation). Much of the liability will be determined by the client's expectation. The principal attorney will remain the principal attorney unless there is a direct relationship between local counsel and the client. Any such shifting of responsibility will have to be clearly documented because most courts are not inclined to shift the responsibility and most clients (plaintiffs) would prefer to have both attorneys' insurers be liable. From the local counsel perspective, there could be potential liability where the engagement is not clearly defined and where the principal attorney withholds certain information that could have been significant. The "he didn't tell me about X" defense very likely will not succeed.

G. Where the attorney chooses to interpret the law of another State and does so incorrectly, there is likely to be liability present. This situation is just as complicated as any other malpractice case involving more than one State. There are issues of jurisdiction, conflicts, statutes of limitation, and standards to be applied. For example, should an estate planning "specialist" from State A be held to the standard of an estate planning "specialist" by State B when State B law is involved?

IV. Professional Responsibility

A. This entire area of multi-jurisdictional practice can have a chilling effect on estate planning practice because the rules are not clearly defined and enforcement is inconsistent. Yet with the possibility of disbarment or professional embarrassment looming, the stakes are quite high. The States are also now tending to focus more resources on enforcement than was the attitude in the past.

B. An attorney who practices beyond the boundaries of the State in which he or she is licensed must understand that the unauthorized practice of law is more than simply a legal restriction. It is also an ethical rule which, if violated, calls the general professional responsibility of the attorney into question. This is not a situation that most attorneys would prefer.
C. There is also an ethical question for the local counsel in terms of splitting fees with an attorney not licensed in that jurisdiction. Fortunately, there is a 10th Circuit case that allowed a division of fees between a local attorney and an out-of-state attorney. Dietrich Corp. v. King Resources Co., 596 F.2d 422 (10th Cir. 1979).

D. There is also an ethical issue for the principal attorney when structuring fee-splitting arrangements with local counsel. The client must be involved, and the arrangements must be properly documented, or there could be a violation of ethical rules.

E. As mentioned above, the principal attorney remains liable and responsible to the client even where local counsel has been retained. This puts a tremendous responsibility on the principal attorney to be sure that the work is handled properly and ethically.

F. An attorney also has an ethical issue when he or she discovers that there are multi-jurisdictional issues involved with the representation. One of the options for the attorney is to attempt to interpret the law of the other State. If the attorney chooses to do so, then the prohibition against handling a legal matter which the attorney knows that he or she is not competent to handle will come into play. However, there is room within that ethical prohibition for learning the new law. This places another burden on the attorney to decide whether, in fact, he or she can become competent in the law of the other State for this particular matter or whether local counsel should be engaged. This is just one of the many ethical problems that surface in the modern era where multi-jurisdiction involvement is the rule rather than the exception.

V. Potential Solutions

A. As mentioned earlier, all States allow attorneys licensed in other jurisdictions to be admitted on a pro hac vice motion within the discretion of the particular judge involved. Most States also require that the motion be made and endorsed by a local attorney. As also mentioned earlier in the outline, this process does very little for the estate planning attorney who is unlikely to be involved in a judicial proceeding. However, one of the suggestions is to ask the States to broaden the pro hac vice motion to allow out-of-state attorneys to practice in the State on a limited basis. With this approach, each case could be decided on an individual basis. The admission would have to acknowledge that there might not be a particular proceeding involved and that the attorney would simply be handling a particular matter and then would inform the Court when the matter was concluded so that the Court could terminate the temporary admission to practice. This approach would need a considerable amount of guideline work by each State Bar and by each State Judiciary. However, since judges have considerable discretion in the present pro hac vice process, this "extended" pro hac vice admission might be acceptable. A variation of this suggestion would involve expanding and streamlining the present process of general admission of out-of-state attorneys to the State Bar on a motion and showing of proper credentials. This could also lead to a
general system of reciprocity among States, which is happening anyway (although there are problems with systems that offer blanket admission for any attorney without checking of individual credentials).

B. Certainly, local counsel can be retained. There would need to be some liberalization of the ethical rules and possibly the unauthorized practice of law rules to make this situation workable for both attorneys. The State would also have some interest in monitoring (if not supervising) this process. Since the present unauthorized practice of law rules would still generally apply, the State would have an interest in being sure that an out-of-state attorney is not simply setting up an office in the state under the guise of using local counsel (who presumably would have nothing to do with the practice in this scenario). It is possible that individual attorneys could facilitate this process and find a way to reduce the added cost to the client by doing such things as preparing prototype documents and lists of “little-known facts about estate planning in this State” for use by out-of-state attorneys with whom they might work.

C. A proposal has been advanced to create a Federal Bar. One variation of this would restrict the federal licensing to federal matters and federal courts (similar to what exists today for the United States Tax Court, the U.S. Patent Office, etc.). Another proposal would create a pure national Bar where the federal government would preempt the power of the States to regulate the licensing of attorneys. While this would solve the current problems with the state of multi-jurisdictional practice, it is highly unlikely to be acceptable to most states. A third variation would arrange licensing very much like the process for certified public accountants. Licensing would still be on an individual state-by-state basis with variations in requirements. However, there would be one national bar exam which would (presumably) test those items most necessary for someone to practice law. The advantage of this approach would be the corresponding reciprocity among the states. While a CPA cannot simply practice in any state, it is relatively easy to establish credentials in another jurisdiction. While this is an interesting proposal, it is not clear to this author how that process would simplify the normal, isolated, multi-jurisdictional engagement for a typical estate planning attorney.

D. A proposal that will receive a significant amount of support is one that would simply separate an attorney licensed and in good standing in another state from a layperson or a disbarred or suspended attorney for purposes of the unauthorized practice of law. The only real controversial issue in this proposal is the one concerning discipline for the attorney. Suggestions have been made that include having the attorney be subject to the jurisdiction of the state in which the actions take place or apply some sort of reciprocity so that the State of admission would apply the disciplinary rules of the State of action. This is probably something on which agreement could be reached among the states.

E. An upgraded version of the proposal in the preceding paragraph would be to establish a multi-state compact on multi-jurisdictional law practice. This would clearly formalize the process in the preceding paragraph on what could be a national level. It would establish national rules, but it would be the individual State Bars adopting it rather
than some federal government agency. It would presumably also allow States to opt out of the system by simply not adopting the compact. There could be adverse consequences for those States who might simply be prohibited from receiving any of the benefits of reciprocity involved. However, it does preserve the independence of the individual State Bars.

F. Many of the proposals are excellent ideas. However, in the long run, the adoption by individual states of more and more Uniform laws will be required to keep the United States competitive in the global economy. This system of Uniform laws allows for State variations but generally creates an environment where attorneys may be less limited by state lines.

VI Basic Principles of Multi-Jurisdictional Estate Planning

A. The principles in this section come from Chapter 3 of Professor Schoenblum’s treatise, Multistate and Multinational Estate Planning. The ideas are his. Any confusion or errors caused by paraphrasing are the responsibility of this author. Some of the principles have been modified or eliminated as inapplicable to this particular subject.

B. **Principle 1**: The jurisdiction in which assets are located exercises ultimate control over those assets.

1. A change in the form of ownership of assets may change the jurisdiction which exercises ultimate control over those assets.

2. This may apply only to the character of the property and not to its ultimate disposition.

C. **Principle 2**: The fact that a State serves as a forum is of little significance in and of itself.

1. If the forum does not actually control the assets, then its judgments may not have great effect.

2. There is a big difference between jurisdiction and genuine authority.

D. **Principle 3**: Choice of law, though different from power over the assets or judicial jurisdiction of the forum over the parties, is another vital ingredient.

1. The state of the forum chooses the law to be applied. That state may choose to apply its own law or the law of another state with significant connections to the particular matter. See the discussion earlier on Conflicts of Law.
2. Different choice of law rules may be applied with respect to different issues, especially different kinds of property (for example, real property vs. personal property). This might also apply to the formal validity of a Will or the construction of the Will.

3. Most jurisdictions require at least some connection with the jurisdiction in order to apply its law. Also, if the law chosen violates a public policy of the forum, that law may be ignored.

E. **Principle 4**: Knowledge of where assets are situated is essential.

1. The situs of property may have a direct impact on its character.

2. The character of an asset may also have an impact on where it is situated. This applies to tangible vs. intangible personal property and real property.

3. State law may actually determine the outcome for Federal tax purposes. Certainly, it will impact state taxation.

F. **Principle 5**: Confidentiality, avoidance of restrictions on testamentary freedom, and defeat of creditors' and tax claims are often essential concerns of clients but cannot readily be assured.

1. Confidentiality can be achieved through the use of trusts designed to avoid probate or through the use of entities for ownership of property.

2. Some states (especially Louisiana) have rules of forced heirship, whereby a spouse, children, or other relatives must receive a specified share of the estate. Other states have designed their legal structure to act as havens from forced heirship, especially for rights of children. However, there is no certainty of success. In addition, community property regimes impose restrictions on freedom of transfer.

3. Various entities and other devices are available within different states to protect clients’ assets from claims of creditors. Alaska and Delaware have specific legislation in this area. Such entities as family limited partnerships and family limited liability companies have been effectively used to protect assets against claims of creditors.

4. A primary objective of most clients is to avoid tax liabilities and penalties. Within the United States, this can be achieved, but only through proper tax planning.

G. **Principle 6**: Diverse and unique types of vehicles for holding assets may be involved in multi-jurisdictional estate planning.
1. Certainly trusts are used in a number of different ways in estate planning. Avoidance of probate, or of multiple probates, is a primary objective.

2. Ownership of assets can be held in any form from sole ownership to joint tenancy, to tenants in common, to tenancy by the entireties, to community property, to some business entities such as a corporation, partnership, or limited liability company.

H. Principle 7: To the extent the client will die with an estate, its probate and administration must be carefully planned.

1. Avoidance of ancillary probates will produce a significant savings in time and cost.

2. Obviously, tax planning is a significant part of planning an estate.

I. Principle 8: While most countries impose death and gift taxes based on residence or domicile, the United States also taxes on the basis of citizenship.

1. United States citizens are liable for the federal estate taxation regardless of where they live or where they are domiciled or where the assets are located.

2. Expatriation seems to be the primary alternative, but most U.S. citizens would prefer not to take that step.

J. Principle 9: The situs of an asset is another basis for the imposition of transfer taxes in the United States.

K. Principle 10: Deductions and credits play an important role in limiting estate and gift tax but require careful attention to qualify and maximize benefit.

L. Principle 11: Serious risks of multiple estate and trust income taxation exist at the multi-state level.

1. The credit under Internal Revenue Code Sec. 2011 is allowed only once for payment of death taxes to any state. If multiple states claim state death taxes for property related to their state, the total of state death taxes paid may exceed the amount of the federal credit for state death taxes.

2. Multiple contact points may exist in the area of income taxation for trusts that would expose the trust to income taxation in several different states. The concept of “trust situs” is poorly understood and poorly defined.

M. Principle 12: Special consideration must be given to malpractice, unauthorized practice, and professional responsibility.
VII. Community Property

A. In an increasingly mobile, national, and even global society, the issue of community property regimes is no longer limited to attorneys practicing in the eight (8) community property states (Louisiana, Texas, New Mexico, Arizona, California, Washington, Nevada, and Idaho) or in Wisconsin and Alaska, which have adopted something like community property.

B. Couples can move from a community property state to a non-community property state. Couples can also move from a non-community property state to a community property state. Couples in a non-community property state could own property in a community property state. Couples in a non-community property state may now be able to elect to treat some of their property as community property by virtue of an Alaska Community Property Trust. As can be seen, this makes community property a significant multi-jurisdictional issue.

C. The overriding concern here is that there is a significant advantage in favor of community property at the death of one of the spouses. Internal Revenue Code Sec. 1014(b)(6) gives a step-up in basis to not only the decedent’s interest but also the surviving spouse’s interest in any property held by them as community property.

D. In general, community property ownership is to be favored, especially in situations involving long-standing first marriages and other situations where divorce is an unlikely event. Of course, most of the cases in the community property area are divorce cases rather than estate cases. This is clearly the downside to community property ownership.

E. One of the chief obstacles that attorneys in non-community property (common law property) states have faced is the fact that there is no one single body of community property law. Each state has its own variations and presumptions. Most of them agree only on the basic principle from Spanish and French tradition that both spouses contribute to the success of a marriage. Therefore, each spouse should own one-half (1/2) of what the “community” owns. The situation is further complicated by the fact that basic concepts of common law property regimes are still used in community property states. Couples can still own property as joint tenants with right of survivorship and as tenants in common (although tenancy by the entireties is not used). Most community property states now recognize that the property can retain its character as community property even though it is held under terminology from a common law property regime. In spite of the many differences among the community property states, there are certain "elements" of community property law that can be identified and used as a guideline for understanding a particular situation or a particular client’s problem. Professor Jeffrey A. Schoenblum, in Chapter 10 of his 2-volume treatise, Multistate and Multinational Estate Planning, identifies twenty-two (22) essential elements of community property. There is not time in the accompanying presentation to cover these,
so they are not reproduced in this outline. They remain a valuable tool for understanding community property law and should be consulted when the attorney has need of this kind of information.

F. Because of the state-by-state variations in community property law, it is sometimes very difficult for an attorney in a common law property state to become conversant in this area. However, in reality, the attorney will only be dealing with the law of one particular community property state at a time.

G. One way of looking at the different community property regimes is that the spouses may have three (3) categories of property. They may each have separate property, and they may also have community property at the same time. Since the character of the property is a significant aspect of estate planning, the character of each and every asset the couple owns must be traced. This is something that attorneys in community property states do as a matter of course. The determination is further complicated by the fact that property held in the name of one of the spouses could be either the separate property of that spouse, or community property of the spouses, or some combination. Two (2) problem areas involve life insurance and retirement benefits. There is not room in this outline to cover those in any depth, so it must suffice that the attorney must pay particular attention to those assets and the law that will apply to them.

H. The general rule is that the law of the situs of real property will control its character. Generally, the law of the married couple’s domicile will determine the character of personal property. Beyond this general characterization, it is possible to plan the estate in such a way that the advantages of community property can be obtained. For example, the use of a trust funded with community property or a family limited partnership or limited liability company to acquire real estate in a common law property jurisdiction may accomplish the double step-up in basis even though the underlying character of the real estate does not change. Of course, a couple living in New York would not want to use one of these devices if they were acquiring property in New Mexico. They would, in fact, want the law of the situs to control the character of the property.

I. The key factor in planning for the multi-jurisdictional character of property is to document the ownership of community property and maintain the separation of community property in the future. All community property states allow the spouses to contract with each other regarding the character of the property. In most of them, the process is quite simple. Therefore, agreements of this type should be used any time there is a possibility that community property status could be lost in the future, whether because the parties move to a common law property state or the parties are already domiciled in a common law property state. The use of revocable trusts and family limited partnerships or limited liability companies also will allow the couple to maintain the community property nature of some or all of their assets. There is absolutely no substitute for good records, especially when future transactions could confuse the issue.
J. Several of the community property states have created what is called “quasi-community property.” This concept effectively transmutes separate property of one of the spouses into community property in certain circumstances. These rules are used most often on divorce, but they also apply in the estate situation. Where a couple spends most of their lives in a common law property jurisdiction, most of the property may be owned by one of the spouses (especially where only one of the spouses worked outside the home). The surviving spouse would be protected to some extent in most common law property jurisdictions through an elective share right. Since there is no such right in the community property states, the concept of quasi-community property replaces it.

K. Fourteen common law property states (including Colorado, Montana, and Wyoming) have adopted the Uniform Disposition of Community Property Rights at Death Act. The Act is designed to preserve the community property character of certain property that was acquired as community property at some time in the past. It allows for tracing of income and proceeds of community property assets. Surprisingly, a state that has adopted the Act will generally apply the law of the situs of the property, even though that will clearly be in another State. The Act, very much in the same nature as community property states, creates a rebuttable presumption that property is community property. Evidence can obviously be introduced by the other party that rebuts this assumption. The Act generally provides that half of any property determined to be community property cannot be disposed of by the deceased spouse. The Act is a step forward in protecting and preserving the community property nature of marital property and the benefits that arise from it. It is unfortunate that so few states have adopted the Act. That apparently follows from common law property state judges having to interpret community property law. That apparently is not an enjoyable task.

L. Mention should be made of the Alaska Community Property Act. It allows Alaska domiciliaries and couples domiciled in other states to elect to have certain property treated as community property. For couples outside of Alaska, a qualifying Alaska Community Property Trust must be used. That Trust would require that at least one Trustee be either an individual in Alaska or a bank or Trust company in Alaska. There are also requirements as to the responsibilities and authority of the Trustee. If the State of Alaska is successful in defending its Act, then this will afford couples anywhere in the country the ability to create community property, at least with items of personal property. The concept has not yet been tested in court.

VIII. Scenarios and Questions

A. A lawyer who is licensed only in State A travels to State B to interview witnesses and examine documents in connection with a Will Contest involving a client who resides in State A. The Will contest will take place in State A. Since there is no lawsuit involved in State B, the provisions for admission pro hac vice are not applicable. Should the lawyer’s activity in State B be permitted? How often do you encounter this situation?
B. The lawyer represents a company in State A that is involved in a business dispute with a company in State B. The lawyer travels to State B to attempt to negotiate a resolution of the dispute. When this is unsuccessful, pursuant to the contract between the respective clients, the lawyer prepares a Demand for Arbitration. The lawyer subsequently conducts the arbitration in State B on behalf of the client. Should the lawyer’s activities in State B be permitted? Should part of it be permitted and the actual conduct of the arbitration not be permitted without admission on a pro hac vice motion? How often do you encounter this situation in your practice?

C. The lawyer travels on behalf of a Trustee of a State A Trust to States B and C to negotiate the acquisition of a business, returns to States B and C on several occasions to conduct due diligence and subsequently returns again to participate in the closing. Should the lawyer’s activity in States B and C be permitted? How often do you encounter this situation? Does it make a difference if the travel is for the purpose of selling property in the other state owned by the Trust?

D. The lawyer travels on several occasions to State B at the request of a new client in State B to handle certain federal tax law work. The lawyer performs most of the work out of his office in State A. The lawyer also advises on and assists the client in complying with the state tax laws of a number of states, including State B. Should the lawyer’s activities in State B be permitted? How often do you encounter this situation? Does it affect your answer if there are documents to be drafted for the client in State B?

E. After practicing trust and estate law for ten years in a law firm in State A, the lawyer, who has now become something of an expert, moves to State B, where her law firm also has an office. She expects to remain there for several years while her husband attends medical school, and then move back to State A. While she studies for the bar examination of State B, the lawyer provides estate planning advice to the law firm’s clients in different states around the country. Should the lawyer’s activities outside her home state be permitted? What if only federal law issues are involved? Should there be a supervisor who is licensed in State B to oversee what she is doing? How well could this attorney supervise an Expert?

F. The lawyer represents an entrepreneur and her business which is conducted on a multi-state basis. The corporate offices are located in State A. The company has offices in States B and C and has subsidiaries with offices in States D and E. The lawyer provides general estate planning advice to the client and general business advice and negotiates and drafts contracts and other documents for her company and its subsidiaries. The lawyer frequently travels to the offices in States B, C, D, and E in order to give advice and review documents. Should the activities of the lawyer be permitted?

G. You are in Santa Fe, New Mexico for a conference on multi-jurisdictional trust and estate practice. While there, you meet a resident of your home state who says she is involved in a potential Will Contest in New Mexico. Her father’s estate is $100
million dollars and she is his only child. However, there is a fourth wife who claims that all of his property was transmuted into community property with her so that she owns one-half of all of his property. The person you met is very unhappy with the New Mexico attorneys she has met. She asks you to represent her in negotiating with her stepmother to settle this dispute. Certainly, if the settlement breaks down and this proceeds to a lawsuit, you will be able to request admission under a pro hac vice motion. However, if the parties reach a settlement, you will not be able to avail yourself of the pro hac vice admission. How do you proceed? Do you see your activities on behalf of your client to be the unauthorized practice of law in New Mexico? What happens when the client refuses to pay your fee?

H. One of your married clients likes to ski in New Mexico. He decides to purchase a condo in the Taos Ski Valley and asks you, his home-state attorney, to prepare the deed and other necessary papers. You prepare and record the deed showing title in your client’s name only. Could there possibly be a problem with the way the property is held in New Mexico? What happens when a divorce action is filed? Might there have been some better way for you to document the ownership to protect your client?

I. One of your friends from law school who practices primarily in Illinois spends a lot of time in Colorado. He suggests to you the possibility that he could open an office in Denver and simply associate with you for all his Colorado work. He plans to advertise in conjunction with you, but he plans to do all of his own legal work. Is there potential liability here for you? What if your office is in Grand Junction?

J. Your best client decides to retire to southern New Mexico. You have represented this client for your entire career, and the client trusts you implicitly. The client would like you to redraft the estate planning documents for any changes required by New Mexico law. You have carefully planned the client’s estate and have kept the plan updated through the years. While the client has a rather large estate, the client is extremely frugal and requests that you keep the cost of updating the estate plan to a minimum. How do you proceed?

K. Your second-best client, with an estate of $50 million, has two sons. One of them lives in Virginia and one of them lives in North Carolina. Through the years, the sons have come to recognize your obvious legal talent. They now each request you to prepare their own estate plans since they now each have a net worth in the $5-10 million range. Your client is so happy with this that he suggests that he will pay your fee. How do you proceed? Assuming that you choose, in one fashion or another, to represent the boys, is it of importance to them and to you that each of them owns a portion of your client’s business in New Mexico that is organized as a Limited Liability Company?

L. You are the attorney probating an estate in your home state. The decedent owned property in ten different states. You are licensed only in your home state. How do you proceed with advising your client regarding collection, protection,
and possible transfer of the property in the other states? Certainly, you can engage local counsel to do ancillary probates or other procedures regarding the estate, but will you engage them to conduct negotiations for sale of the properties or other transactions? What if the value of the property in one of the states is less than $30,000.00?

M. You have a brand new website that has been very well publicized on the Internet. It is very easy to find and is very impressive. On your first day using the new site, you receive a request from someone in Michigan for you to answer a tax question. If you answer the federal tax question, are you engaged in the unauthorized practice of law in the State of Michigan? Does it matter that you are not physically present in the jurisdiction? What if the question had to do with the sale of property located in Michigan? Five minutes later, you get a request from a couple in New Mexico to do a federal estate tax calculation for them. They do not request that you complete any documents or even come to New Mexico to meet with them. Are you engaging in the unauthorized practice of law in New Mexico? Are you also possibly violating the Lawyer Advertising rules of the states of Michigan and New Mexico? How can your on-line presence be done in a professional and ethical manner?

N. One of your clients offers to fly you to Florida so that they can have a family meeting. You represent only your client and are only advising about your home state law. Can you properly advise the family, who all live in different states, about the consequences of the estate plan you have developed for your client? Is it possible that you are engaging in the unauthorized practice of law in the State of Florida when you have this meeting?

IX. Conclusion

A. Because of the work of the American Bar Association Commission on Multi-Jurisdictional Practice and the corresponding task forces, commissions and committees at the State level, the future of the present system of regulating multi-jurisdictional practice will be decided soon.

B. There is no simple answer to the problem.

C. This is more than a new battle over “state's rights” vs. the power of the federal government. The States have done an excellent job of protecting the general public for over two hundred years. Before that system is scrapped in favor of some streamlined method that is more in keeping with modern times, attorneys must be sure that the new system will be as effective as the system it replaces.
## TABLE OF AUTHORITIES

American Bar Association Commission on Multi-Jurisdictional Practice website, [http://www.abanet.org/cpr/mjp-home.html](http://www.abanet.org/cpr/mjp-home.html). There are well over 50 references to articles and other works on this subject at this website, including the articles on the symposium sponsored by the Center for Professional Responsibility at Fordham University Law School, March 2000.


A lawyer shall not:

(a) practice law in a jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction; or

(b) assist a person who is not a member of the Colorado bar in the performance of activity that constitutes the unauthorized practice of law.

COMMENT

The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. Paragraph (b) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in governmental agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

Committee Comment

The two subparts in this Rule are nearly identical to DR 3-101(B) and DR 3-101(A), respectively. Rule 5.3(b) replaces "nonlawyer" found in DR 3-101(A) with "person who is not a member of the Colorado bar." The latter phrase is better, especially since it should eliminate some of the confusion that now arises when lawyers who are licensed elsewhere relocate to Colorado and begin work, perhaps in a law firm as an associate, before gaining admission to the Colorado bar.
SECTION VIII
Unauthorized Practice of Law

RULE 800. Purpose - Jurisdiction - Effective Date

(a) Statement of Purpose. The public interest requires that in securing professional advice and assistance upon matter affecting one's legal rights one should have assurance of the competence and integrity of his or her representative and should enjoy freedom of full disclosure under a recognized privilege of confidentiality. To protect this public interest it is deemed necessary to establish guidelines for the investigation of complaints, and the procedures to be followed to eliminate the unauthorized practice of law as provided by Idaho Code Secs. 3-401 and 3-420.

(b) Jurisdiction. Pursuant to the provisions of Article II, Section 1, of the Constitution of the State of Idaho, the Idaho Supreme Court has inherent jurisdiction to prohibit the unauthorized practice of law. Nothing contained herein is intended to limit the inherent authority of the Idaho Supreme Court or the authority of any other Idaho court to regulate the matters coming before it, including attempts to practice law by persons not licensed to practice law before said courts. All Idaho courts have inherent judicial powers to prohibit and to punish the unauthorized practice of law before them, and the Idaho State Bar encourages the use of such direct power to eliminate the unauthorized practice of law whenever necessary or appropriate. *(Section (b) amended 6-10-98 - effective 7-1-98)*

(c) Authority to Promulgate Rules. Pursuant to the authority granted in Idaho Code Sec. 3-408, and subject to approval of the Idaho Supreme Court, the Board of Commissioners of the Idaho State Bar, as an official arm of the Supreme Court, hereby promulgates the following rules for the conduct of proceedings relating to the unauthorized practice of law.

(d) Effective Date. These rules shall become effective on July 1, 1986. Any formal proceeding then pending shall be concluded under the procedure existing prior to the effective date of these Rules.

RULE 801. Definitions. As used in these Rules, the following terms have the following meanings, unless expressly otherwise provided, or as may result from necessary implications.

(a) Bar Counsel. "Bar Counsel" means the general legal counsel for the Board of Commissioners of the Idaho State Bar.

(b) Board or Board of Commissioners. "Board" or Board of Commissioners means the duly elected governing body of the Idaho State Bar.

(c) Complaint. "Complaint" means a written statement which an individual or entity files in the office of Bar Counsel, alleging that a person or entity has engaged in the unauthorized practice of law. *(Section (c) amended 3-1-88)*
(d) **Committee or Standing Committee.** "Committee" or "Standing Committee" means the Standing Committee on Unauthorized Practice of Law appointed by the Board of Commissioners.

(e) **Court or Supreme Court.** "Court" or "Supreme Court" means the Supreme Court of the State of Idaho.

(f) **Respondent.** "Respondent" means an individual alleged to have engaged in the unauthorized practice of law.

(g) **Rules or These Rules.** "Rules" or "These Rules" means Rules 800 through 809 of the Bar Commission Rules.

(h) **State.** "State" means the State of Idaho.

(i) **Unauthorized Practice of Law.** "Unauthorized Practice of Law (UPL)" means the practice of law without being duly qualified to do so, as prohibited by statute, court rule, or case law of the state. *(Rule 801 amended 6-10-98 - effective 7-1-98)*

**RULE 802. Standing Committee on Unauthorized Practice of Law**

(a) **Membership.** The Board of Commissioners shall appoint a three (3) member committee to be known as the "Standing Committee on Unauthorized Practice of Law of the Idaho State Bar" which shall be composed of members of the Idaho State Bar, in good standing appointed to staggered terms of three (3) years each. *(Section (a) amended 6-10-98 - effective 7-1-98)*

(b) **Subsequent Terms.** Subsequent terms of all members shall be for three (3) years.

(c) **Officers.** The Board shall designate one (1) member of the Committee as Chairman and one (1) member as Vice-chairman. The chairman, and in his or her absence the vice-chairman, shall be responsible for calling and presiding over meetings of the Committee and for certifying to the Board all recommendations concerning matters which come before the Committee.

(d) **Quorum.** Two (2) members of the Committee shall constitute a quorum. All decisions of the Committee must be by majority vote of those present. *(Sections (a)-(d) amended 3-1-88)*

(e) **Duties and Powers.** The Standing Committee shall have the following powers, duties and responsibilities:
   1. To receive complaints of unauthorized practice of law;
   2. To refer complaints which appear to have merit to Bar Counsel for investigation and to supervise and direct such investigations by Bar Counsel;
   3. To review the results of Bar Counsel investigations of allegations of unauthorized practice of law;
(4) To cause cease and desist letters to be issued seeking voluntary compliance by a respondent with unauthorized practice of law statutes, rules or case law;

(5) To make and submit reports and/or recommendations for the institution of judicial action to enjoin or punish the unauthorized practice of law to the Board of Commissioners.

(6) To adopt additional rules of procedure subject to approval of the Board of Commissioners.

(7) To cause subpoenas to be issued upon request of Bar Counsel to compel attendance and production of evidence necessary or convenient to the investigation of a complaint of the unauthorized practice of law. *(Section (e) amended 3-1-88; 3-15-91; and 6-10-98 - effective 7-1-98)*

(f) **Restrictions on Issuance of Subpoenas.** No subpoena shall be issued under this Rule unless a majority of the Committee shall determine, in writing, that probable cause exists to believe:

   (1) that a respondent is engaged in the unauthorized practice of law; and

   (2) the person to whom the subpoena is directed may have evidence relevant to the investigation of such matter. Each subpoena so issued shall indicate with specificity the documents sought to be produced and the matters on which the person to whom it is directed shall be asked to produce evidence. No such subpoena shall be issued in blank. A copy of each subpoena issued, together with the return thereon, shall be retained in Bar Counsel’s investigative file. *(Section (f) amended 6-10-98 - effective 7-1-98)*

(g) **Service of Subpoenas.** Subpoenas issued under this Rule shall be served pursuant to Rule 45(c)(2), Idaho Rules of Civil Procedure.

(h) **Failure to Comply with Subpoena.** Failure of any person subpoenaed in accordance with this Rule shall subject that person to all penalties and procedures provided by law, including but not limited to those specified in Idaho Code Section 3-414, Rule 45(f), Idaho Rules of Civil Procedure and Title 7 Chapter 6, Idaho Code. The district court of the judicial district in which attendance or production is required, upon the petition of Bar Counsel, shall enforce the attendance and testimony of any witness and the production of any documents so subpoenaed. Witness fees and mileage shall be paid in the same manner as in the district court. *(Sections (f)-(h) added 3-15-91. Section (f) amended 6-10-98 - effective 7-1-98)*

(j) **Conflicts.** Members of the Standing Committee shall refrain from taking part in any proceedings in which a judge, similarly situated, would be required to abstain. If, in any given case, the number of Committee members who may properly render a decision falls below a quorum, the Board of Commissioners may appoint, for that case only, the number of ad hoc members necessary to restore the Standing Committee to full membership. Each ad hoc member shall fulfill all the responsibilities of the member whom he or she replaces.

(k) **Compensation and Expenses.** The members of the Standing Committee shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties under these Rules.
(l) **Vacancies.** Vacancies during a term shall be filled by the Board of Commissioners for the remainder of the unexpired term.

**RULE 803. District Committees**

(a) *Ad Hoc District Committees.* The Board of Commissioners, on its own initiative or at the request of the Standing Committee, may appoint one or more *ad hoc* committees on unauthorized practice in one or more judicial districts, composed of such number of persons who shall serve for the terms, and shall have only the powers and duties, as may be set forth by the Board in the resolution creating and appointing such *ad hoc* committee. No such *ad hoc* committee, however, shall have or exercise any power given to the Standing Committee.

(b) *Other District Committees.* Nothing contained herein shall be construed to limit the power of a district bar association to establish a district committee having responsibility for monitoring and reporting on unauthorized practice of law within the district’s geographical boundaries. *(Rule 803 amended 6-10-98 - effective 7-1-98)*

**RULE 804. Bar Counsel.** Bar Counsel shall have the following powers and duties with respect to matters involving allegations of unauthorized practice of law:

(a) To appoint such staff, and to incur such expenses as may be necessary to the performance of his or her duties, subject to budgetary considerations and to the approval of the Board of Commissioners.

(b) To advise the Standing Committee regularly of all complaints submitted to Bar Counsel involving the unauthorized practice of law for their consideration.

(c) To investigate complaints of unauthorized practice of law under the direction of the Standing Committee, in any way deemed necessary and proper by the Committee, and to report the results of such investigation to the Standing Committee on a regular basis.

(d) To issue cease and desist letters seeking voluntary compliance by a respondent with unauthorized practice of law statutes, rules or case law.

(e) To act as counsel for the Idaho State Bar in all judicial proceedings initiated by it involving allegations of unauthorized practice of law.

(f) To maintain permanent records of unauthorized practice of law matters and compile statistics to aid in the administration of the system.

(g) To perform all other duties and functions as may be required of him or her by the Standing Committee or the Board of Commissioners with regard to the enforcement of unauthorized practice of law statutes, rules or case law. *(Rule 804 amended 6-10-98 - effective 7-1-98)*
RULE 805. Investigation and Preliminary Proceedings

(a) **Investigation.** All investigations shall be conducted by Bar Counsel under the authority and direction of the Standing Committee.

(b) **Action by Standing Committee.** The Standing Committee shall review each complaint of unauthorized practice and the report of any investigation by Bar Counsel and may, in its discretion, without Board approval:

1. close the matter without taking further action;
2. cause to be issued a cease and desist letter seeking voluntary compliance with unauthorized practice laws from the respondent;
3. refer the matter to the appropriate county prosecutor for action under *Idaho Code* § 3-420; or
4. recommend to the Board that the Idaho State Bar initiate judicial action against the respondent seeking such remedies as may be provided by law.

(c) **Board Action.** Upon receipt of the Standing Committee's recommendations, the Board shall review the matter and upon such review, the Board may:

1. adopt, modify or reject the recommendations of the Standing Committee.
2. remand the matter to the Standing Committee for further investigation.
3. seek assurance of voluntary compliance.
4. approve the initiation of any appropriate judicial action, whether civil or criminal, in any court of competent jurisdiction, to enforce the state’s unauthorized practice statutes, rules and case law, including, for example, referring the matter to a county prosecutor for action under Idah *Idaho Code* § 3-420. (Rule 805 amended 3-15-91 and 6-10-98 - effective 7-1-98)

RULE 806. Voluntary Compliance

(a) **Acceptance of Assurance of Voluntary Compliance.** The Board or Standing Committee may accept a written assurance of voluntary compliance that respondent will not continue the unauthorized practice of law, a copy of which shall be maintained in the permanent unauthorized practice files of Bar Counsel.

(b) **Effect of Giving Assurance of Voluntary Compliance.** The act by a respondent of giving assurance of voluntary compliance shall not be considered an admission of violation for any purpose. Any subsequent act by the respondent in violation of such assurance of voluntary compliance shall *prima facie* establish that the person subject thereto knows, or in the exercise of due care should know, that Idaho law prohibits the unauthorized practice of law by persons not licensed to do so in Idaho, that the Idaho State Bar has determined in the past that the respondent’s activities were in violation of such laws, and that further action by the Idaho State Bar to stop such activities was halted based on respondent’s assurance that he or she would no longer engage in the unauthorized practice of law, and that he or she has in the past violated, the law. (Section (a) amended 3-15-91) (Rule 806 amended 6-10-98 - effective 7-1-98; and amended 3-31-00)
RULE 807. Judicial Proceedings. Civil judicial proceedings shall be initiated and prosecuted by Bar Counsel, after approval by the Board and under its direction, in accordance with the Rules of Civil Procedure applicable to the type of proceeding authorized by the Board. The Board shall have full authority in any such action to conduct such lawsuit, whether to seek enforcement of the state’s unauthorized practice laws to their fullest extent or to compromise, settle or dismiss same, as it may in its discretion from time to time determine. Criminal judicial proceedings shall be referred to the appropriate county or state prosecutor, and the Bar’s involvement therein shall be directed by the Board. The Board may also delegate its authority to direct the course of any such lawsuit to the Standing Committee or to Bar Counsel, as it may from time to time determine. (Rule 807 amended 3-15-91 and 6-10-98 - effective 7-1-98)

RULE 808. Immunity. Members of the Standing Committee, members of any ad hoc district committee, Bar Counsel, members of the Board of Commissioners, and members of their respective staffs shall be immune from civil suit and damages for any conduct or occurrence in the course of or arising out of performance of any official duties in connection with these Rules. (Rule 808 amended 6-10-98 - effective 7-1-98)

RULE 809. Confidentiality. The identity of all complainants, respondents and witnesses in cases involving allegations of the unauthorized practice of law shall be kept confidential until and unless:

(a) a complaint has been filed in the district court in the judicial district where the alleged unauthorized practice of law occurred; or

(b) the person has waived the right to confidentiality either by written waiver or by conduct. (Rule 809 amended 6-10-98 - effective 7-1-98)
RULE 5.5 UNAUTHORIZED PRACTICE OF LAW

A lawyer shall not:

(a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

New Mexico Rules of Professional Conduct

16-505. Unauthorized practice of law

A lawyer shall not:

A. practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction

B. assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law;

C. employ or continue the employment of a disbarred or suspended lawyer as an attorney; or

D. employ or continue the employment of a disbarred or suspended lawyer as a law clerk, a paralegal or in any other position of a quasi-legal nature if the suspended or disbarred lawyer has been specifically prohibited from accepting or continuing such employment by order of the Supreme Court or the disciplinary board.

[As amended, effective September 1, 1987.]
RULE 5.5 UNAUTHORIZED PRACTICE OF LAW

A lawyer shall not:

(a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

COMMENT

The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. Paragraph (b) does not prohibit a lawyer from employing the services of paraprofessional and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law, for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

Reference: Minutes of the Professional Conduct Subcommittee of the Attorney Standards Committee on 11/08/85 and 01/31/86
SOUTH DAKOTA RULES OF PROFESSIONAL CONDUCT

CHAPTER 5 -- LAW FIRMS AND ASSOCIATIONS

Rule 5.5 Unauthorized Practice of Law.

A lawyer shall not:

(a) Practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(b) Assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

COMMENT:

The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. Paragraph (b) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.
Rule 5.5. Unauthorized practice of law.

A lawyer shall not:

(a) Practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(b) Assist any person in the performance of activity that constitutes the unauthorized practice of law.

COMMENT

The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the Bar protects the public against rendition of legal services by unqualified persons. Paragraph (b) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.
Wyoming Court Rules Annotated

RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS AT LAW

LAW FIRMS AND ASSOCIATIONS

Rule 5.5. Unauthorized practice of law.

A lawyer shall not:

(a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

Comment. - The definition of the practice of law is established by law and varies from one (1) jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. Paragraph (b) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.
AMERICAN COLLEGE OF TRUST AND ESTATE COUNSEL

2001 BIG SKY REGIONAL MEETING

May 19, 2001

MULTI-JURISDICTIONAL ISSUES IN ESTATE PLANNING, INCLUDING COMMUNITY PROPERTY