

Rule 5.5 Unauthorized Practice of Law; Multi-jurisdictional Practice of Law. [Sorted by Commenter]						TOTAL = Agree = Disagree = Modify = NI = 0
No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	Norman R. Cohen	M	No		<p>I am a retired attorney and an inactive member of the California Bar. As I understand it, the Rules now consider an attorney who does FINRA arbitrations (among others) as being engaged in the practice of law which effectively prohibits retired lawyers like myself who do not want to retain active status from sitting as an arbitrator even as being simply a "public" member of any arbitration panel.</p> <p>For years, the Rules were interpreted so as to permit lawyers to sit on such panels without construing it as being engaged in the practice of law but that was reversed a few years ago and organizations such as FINRA (with whose representatives I have discussed the issue at length) feel that they are helpless to fight a State Bar Rule. I ask that the current interpretation be reversed or that a new Rule be promulgated which permits inactive bar members to sit on these panels without their participation being considered as practicing law.</p>	<p>The Commission did not make the requested addition to the rule which would define whether certain lawyer conduct by an inactive member constitutes the practice of law in California. In the Commission's initial version of proposed Rule 5.5, comments were included to give guidance on conduct that constitutes the practice of law in California. That guidance was criticized when that version of the rule was issued for public comment. Essentially, the guidance was criticized as being both over and under-inclusive and therefore more misleading than helpful. The Commission has reconsidered whether to restore comments that might give guidance on the definition of the practice of law and has reaffirmed its earlier decision, based on the earlier public comments received, to not include such guidance.</p>
2	COPRAC	A	Yes		COPRAC supports the adoption of Proposed Rule 5.5 and the Comments to the Rule.	No response needed.

¹ A = AGREE with proposed Rule D = DISAGREE with proposed Rule M = AGREE ONLY IF MODIFIED NI = NOT INDICATED

**Rule 5.5 Unauthorized Practice of Law; Multi-jurisdictional Practice of Law.
[Sorted by Commenter]**

TOTAL = Agree =
Disagree =
Modify =
NI = 0

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
3	San Diego County Bar Association	M	Yes		<p>The addition of "knowing" in 5.5(a)(2) is a good change.</p> <p>Rule 5.5(b) is flawed due to the practical problem of disciplining lawyers admitted outside of California, also this paragraph falls short of stating a clear prohibition that bars non California lawyers from practicing in this state and could be improved if revised to address the ambiguity of the continuous and systematic presence standard</p> <p>Comment [7] interpreting 5.5(a)(2) should be reworded or deleted</p>	<p>No response needed.</p> <p>Commission disagreed, in part, because State Bar staff informed the Commission that the State Bar Court is able to conduct a disciplinary proceeding, such as a default proceeding, involving a lawyer licensed outside of California and that the disciplinary order resulting from such a proceeding is forwarded to the lawyer's home bar association for consideration and action.</p> <p>The Commission deleted Comment [7].</p>

Rule 5.5 – Public Comment – File List

X-2010-418 Norman Cohen [5.5]	1
X-2010-421o COPRAC [5.5]	2
X-2010-425 SDCBA [5.5]	3

Hollins, Audrey

From: Norman R. Cohen [nrchn1@earthlink.net]
Sent: Monday, May 03, 2010 7:31 PM
To: Hollins, Audrey
Subject: Professional Conduct Rules

I am a retired attorney and inactive member of the California Bar. As I understand it, the rules now consider an attorney who does FINRA arbitrations (among others) as being engaged in the practice of law which effectively prohibits retired lawyers like my self who do not want to retain active status from sitting as an arbitrator even as being simply a "public" member of any arbitration panel.

The rule has reduced the number of arbitrators available to sit on panels and, I believe is absurd in its application as it differentiates between active and inactive members of the bar without any rational other than to force inactive lawyers who want to sit as arbitrators to pay bar dues and endure CLE courses which have no relationship to FINRA's securities arbitration panels. For years the rules were interpreted so as to permit lawyers to sit on such panels without construing it as being engaged in the practice of law but that was reversed a few years ago and organizations such as FINRA (with whose representatives I have discussed the issue at length) feel that they are helpless to fight a state bar rule. I ask that the current interpretation be reversed or that a new rule be promulgated which permits inactive bar members to sit on these panels without their participation being considered as practicing law.

Norman R. Cohen



**THE STATE BAR
OF CALIFORNIA**

180 HOWARD STREET, SAN FRANCISCO, CA 94105-1639

**COMMITTEE ON PROFESSIONAL
RESPONSIBILITY AND CONDUCT**

TELEPHONE: (415) 538-2161

May 6, 2010

Harry B. Sondheim, Chair
Commission for the Revision of the
Rules of Professional Conduct
State Bar of California
180 Howard Street
San Francisco, CA 94105

RE: Proposed Rule 5.5

Dear Mr. Sondheim:

The State Bar of California's Committee on Professional Responsibility and Conduct (COPRAC) appreciates the opportunity to comment on the proposed amendments to the Rules of Professional Conduct of the State Bar of California, pursuant to the request of the Board Committee on Regulation, Admissions & Discipline Oversight (RAD) for public comment.

COPRAC has reviewed the provisions of proposed Rule 5.5 - Unauthorized Practice of Law; Multijurisdictional Practice. COPRAC supports the adoption of proposed Rule 5.5 and the Comments to the Rule.

Thank you for your consideration of our comments.

Very truly yours,

Carole Buckner, Chair
Committee on Professional
Responsibility and Conduct

cc: Members, COPRAC

May 6, 2010

Ms. Audrey Hollins
Office of Professional Competence, Planning and Development
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re:

RULE	TITLE
Rule 1.0	Purpose and Scope of the Rules of Professional Conduct
Rule 1.0.1	Terminology *BATCH 6*
Rule 1.1	Competence
Rule 1.2	Scope of Representation and Allocation of Authority Between Client and Lawyer
Rule 1.4	Communication
Rule 1.4.1	Disclosure of Professional Liability Insurance *BATCH 6*
Rule 1.5	Fee for Legal Services
Rule 1.5.1	Financial Arrangements Among Lawyers
Rule 1.6	Confidential Information of a Client
Rule 1.7	Conflict of Interests: Current Clients
Rule 1.8.1	Business Transactions with a Client and Acquiring Interests Adverse to the Client
Rule 1.8.2	Use of a Current Client's Confidential Information
Rule 1.8.3	Gifts from Client
Rule 1.8.5	Payment of Personal or Business Expenses Incurred by or for a Client
Rule 1.8.6	Payments Not From Client
Rule 1.8.7	Aggregate Settlements
Rule 1.8.8	Limiting Liability to Client
Rule 1.8.9	Purchasing Property at a Foreclosure Sale or a Sale Subject to Judicial Review
Rule 1.8.10	Sexual Relations with Client
Rule 1.8.11	Imputation of Personal Conflicts (Rules 1.8.1 to 1.8.9)
Rule 1.9	Duties to Former Clients
Rule 1.11	Special Conflicts for Former and Current Government Officers and Employees *BATCH 6*
Rule 1.12	Former Judge, Arbitrator, Mediator or Other Third-Party Neutral
Rule 1.13	Organization as Client
Rule 1.14	Client with Diminished Capacity
Rule 1.15	Handling Funds and Property of Clients and Other Persons
Rule 1.16	Declining or Terminating Representation
Rule 1.17	Purchase and Sale of a Law Practice *BATCH 6*
Rule 1.18	Duties to Prospective Clients *BATCH 6*
Rule 2.1	Advisor
Rule 2.4	Lawyer as a Third-Party Neutral
Rule 2.4.1	Lawyer as a Temporary Judge
Rule 3.1	Meritorious Claims
Rule 3.3	Candor Toward the Tribunal
Rule 3.4	Fairness to Opposing Party and Counsel
Rule 3.5	Impartiality and Decorum of the Tribunal
Rule 3.6	Trial Publicity
Rule 3.7	Lawyer As A Witness

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Rule 3.9	Advocate in Non-adjudicative Proceedings *BATCH 6*
Rule 3.10	Threatening Criminal, Administrative, or Disciplinary Charges
Rule 4.1	Truthfulness in Statements to Others *BATCH 6*
Rule 4.2	Communication with a Person Represented by Counsel
Rule 4.3	Dealing with Unrepresented Person
Rule 4.4	Respect for Rights of Third Persons *BATCH 6*
Rule 5.1	Responsibilities of Partners, Managers, and Supervisory Lawyers
Rule 5.2	Responsibilities of a Subordinate Lawyer
Rule 5.3	Responsibilities Regarding Nonlawyer Assistants
Rule 5.3.1	Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member
Rule 5.4	Duty to Avoid Interference with a Lawyer's Professional Independence
Rule 5.5	Unauthorized Practice of Law; Multijurisdictional Practice
Rule 5.6	Restrictions on Right to Practice
Rule 6.1	Voluntary Pro Bono Publico Service *BATCH 6*
Rule 6.2	Accepting Appointments *BATCH 6*
Rule 6.3	Legal Services Organizations
Rule 6.4	Law Reform Activities
Rule 6.5	Limited Legal Services Programs *BATCH 6*
Rule 7.1	Communications Concerning the Availability of Legal Services
Rule 7.2	Advertising
Rule 7.3	Direct Contact with Prospective Clients
Rule 7.4	Communication of Fields of Practice and Specialization
Rule 7.5	Firm Names and Letterheads
Rule 8.1	False Statement Regarding Application for Admission to Practice
Rule 8.1.1	Compliance with Conditions of Discipline and Agreements in Lieu of Discipline
Rule 8.2	Judicial and Legal Officials; Lawyer as a Candidate or Applicant for Judicial Office *BATCH 6*
Rule 8.3	Reporting Professional Misconduct
Rule 8.4	Misconduct
Rule 8.4.1	Prohibited Discrimination in Law Practice Management and Operation
Rule 8.5	Disciplinary Authority; Choice of Law

Dear Ms. Hollins:

This letter constitutes the San Diego County Bar Association's response to The State Bar of California's Request for Public Comment on the foregoing proposed rules of Professional Conduct.

The SDCBA reconfirms previous responses to each of the foregoing proposed rules.

Very truly yours,



Patrick L. Hosey, President
San Diego County Bar Association

October 10, 2006

Audry Hollins
Office of Professional Competence,
Planning and Development
State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

Re: Response to Request for Comments
Discussion Draft: Proposed Amendments to the Rules of
Professional Conduct of the State Bar of California

Dear Ms. Hollins:

On behalf of the San Diego County Bar Association, I respectfully submit the enclosed with respect to the pending Twenty-Seven (27) Proposed New or Amended Rules of Professional Conduct of the State Bar of California, developed by the State Bar's Special Commission for the Revision of the Rules of Professional Conduct. We have also included separate comments (approvals) of the proposed Global Changes related thereto. This is in response to the State Bar of California's request for comments thereon distributed in June, 2006.

Please note that although the comments reflect the position of the San Diego County Bar Association, we have also included dissenting views offered by members of its Legal Ethics Committee. Given the tentative state of the proposed new and amended rules, we wished to provide as much input to the Special Commission as possible, with which to assist them in their efforts.

Thank you for providing our Association the opportunity to participate in this process.

Respectfully Submitted,



Andrew S. Albert, President
San Diego County Bar Association

Enclosures

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Lilys D. McCoy

MEMORANDUM

Date: October 16, 2006

To: Special Commission for the Revision of the Rules of Professional Conduct
The State Bar of California

From: San Diego County Bar Association ("SDCBA")

Re: "1st PC Batch," Proposed New or Amended Rules of Professional Conduct of the
State Bar of California

**Subj: Proposed Rule 5.5: Unauthorized Practice of Law; Multijurisdictional
Practice of Law**

Founded in 1899 and comprised of over 8,000 members, the SDCBA is its region's oldest and largest law-related organization. Its response herein, as adopted by the SDCBA Board of Directors, followed extensive review and consideration by its selectively-constituted Legal Ethics Committee, the advisory body charged by the SDCBA bylaws with providing its members guidance in the areas of ethics and ethical considerations.

The SDCBA respectfully submits the following concerning the subject proposed Rule:

* * * * *

Comment 1:

The changes to the language of 1-300 related to the unauthorized practice of law by California lawyers are sound.

Rationale For Comment 1:

Prohibiting only "knowing" assistance of another in the unauthorized practice of law is a good change. It is conceivable, for example, that a California lawyer could assist someone in the practice of law who is disbarred without the lawyer knowing the person he or she is assisting is disbarred or not otherwise licensed to practice in California. The change to this part of the rule also brings this rule into line with other rules requiring that the offense be "knowing," such as RPC 2-100 prohibiting that contact with a person the lawyer knows is represented by counsel in the matter. (See *Snider v. Superior Court* (2003) 113 Cal.App.4th 1187.)

Comment 2:

Proposed comment 7, purporting to explain subsection (a)(2) of the proposed rule, is confusing and either should be reworded or deleted.

Rationale for Comment 2:

Comment 7 says that the rule against assisting others in the unauthorized practice of law does not “prohibit a lawyer from counseling lawyers or non-lawyers in how to proceed in their own matters.” If the commentator intends by this only that a California lawyer may assist a pro se litigant or drafter, whether admitted to a different bar or not a lawyer at all, it should say so. Otherwise, “their own matters” makes no sense. If, for example, a non-California lawyer has as one of his “own matters” a California case he is not otherwise authorized to handle, the rule against assisting in the unauthorized practice would apply even if it is the lawyer’s “own matter” as lawyers generally refer to matters under their control.

The second sentence of Comment 7 purports to permit California lawyers to advise those who are not California lawyers about “the kinds of legal services they may provide in California.” We assume the comment writer is distinguishing between “legal services” that do not constitute “the practice of law” and “legal services” that do constitute the practice of law. If so, the second sentence should add the following underlined insertion: “Paragraph (a)(2) is also not intended to prohibit a lawyer from counseling non-lawyers or lawyers not admitted to practice law in California concerning the kinds of legal services not constituting the practice of law they may provide in California.”

Comment 3:

The flaws in 5.5(b), addressing the multijurisdictional practice of law, are more serious. First, is the practical problem of subjecting to discipline before the California State Bar lawyers who are admitted only elsewhere.

Rationale for Comment 3:

N/A

Comment 4:

Comment 2 says that “paragraph (b) [of Proposed Rule 5.5] prohibits lawyers from practicing law in California unless admitted to practice in this state or otherwise entitled to practice law in this state by court rule or other law.” No it doesn’t.

Rationale for Comment 4:

Paragraph (b) only prohibits non-California lawyers from establishing or maintaining an office or continued presence in this state or representing to others that the lawyer is admitted to practice in California. That is not the same thing as flatly barring non-California lawyers from practicing law in this state except as otherwise allowed.

By contrast, ABA Model Rule 5.5(a) says: “A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction. . . .”

That expressly limits lawyers – *all lawyers* – to practice in those jurisdictions where they are licensed or otherwise authorized to practice.

We recommend adding new subsection (b)(1): “except as authorized by these Rules or other law, engage in any activity constituting the ‘practice of law’ as that term is construed under California law.” We would renumber what are now subsections (1) and (2) as numbers (2) and (3).

We do not agree that the prohibition on the practice of law in California by non-California lawyers is necessarily implied by the prohibition on representing oneself as admitted to practice law in this state when one is not. Even if it were, the central purpose of a rule should be expressed not merely implied.

Please see Exhibit A for clean and redlined versions of the suggested changes to this proposed new rule.

Concurring Comments

Query whether the comment is accurate in saying that “paragraph (b) prohibits lawyers from practicing law in California unless admitted to practice in this state or otherwise entitled to practice law in this state by court rule or other law.” To the contrary, (b) gives rise to the argument that a particular practice is not systematic or continuous, nor part of a resident office.

The question of inter-jurisdictional practice is an area in which lawyers really *do* need guidance, and therefore the rules should be clear. Without taking a position on what “the unlawful practice of law” is or should be, the rule is of little assistance and it an unambiguous articulation of the issue is needed.

EXHIBIT A

CLEAN AND REDLINED VERSIONS

SDCBA SUGGESTED REVISION TO PROPOSED RULE 5.5

Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law

- (a) A lawyer admitted to practice law in California shall not:
- (1) practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction; or
 - (2) knowingly assist a person or organization in the performance of activity that constitutes the unauthorized practice of law.
- (b) A lawyer who is not admitted to practice law in California shall not:
- (1) except as authorized by these Rules or other law, engage in any activity constituting the “practice of law” as that term is construed under California law;
 - (2) except as authorized by these Rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; or
 - (3) hold out to the public or otherwise represent that the lawyer is admitted to practice law in California.

Comment

- [1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. Paragraph (a) prohibits the unauthorized practice of law by a lawyer, whether through the lawyer’s direct action or by the lawyer assisting another person in the performance of activities that constitute the unauthorized practice of law.
- [2] Paragraph (b) prohibits lawyers from practicing law in California unless admitted to practice in this state or otherwise entitled to practice law in this state by court rule or other law. (See California Business and Professions Code, sections 6125 and 6126. See also California Rules of Court, rules 964 [registered legal services attorneys], 965 [registered in-house counsel] 966 [attorneys practicing law temporarily in California as part of litigation], 967 [non-litigating attorneys temporarily in California to provide legal services], 983 [counsel *pro hac vice*], rule 983.1 [appearance by military counsel], 983.2 [certified law students], rule 983.4 [out-of-state attorney arbitration counsel program] and rule 988 [registered foreign legal consultant].) A lawyer does not violate paragraph (b) to the extent the lawyer is engaged in activities authorized by any other applicable exception. (See, e.g., 35 U.S.C. section 32(b)(2)(D) and *Sperry v. Florida ex rel. Florida Bar* (1963) 373 U.S. 379 [83 S.Ct. 1322]; *Augustine v. Dept. of Veteran Affairs* (Fed. Cir. 2005) 429 F.3d 1334.)

Guidance on what constitutes the practice of law

- [3] The definition of the practice of law is established by law and varies from one jurisdiction to another. The purpose of prohibiting the unauthorized practice of law is to protect the public and the administration of justice from the provision of legal services by unqualified persons or entities. Except as otherwise prohibited in Rule 5.3.1, paragraph (a)(2) is not intended to prohibit a lawyer from employing the services of para-professionals or other assistants and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work as provided in Rule 5.3. Likewise, paragraph (a)(2) is not intended to prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law, including claims adjusters, employees of financial or commercial institutions or entities, social workers, accountants, low cost legal service programs, and persons employed in government agencies.
- [4] In California, the definition of the “practice of law” has evolved through case law and is generally understood to include the following:
- (a) Non-lawyer providing legal advice to California resident in California, even if the advice is with regard to non-U.S. law. (*Bluestein v. State Bar* (1975) 13 Cal.3d 162, 175, [118 Cal.Rptr. 175, 183, fn. 13]. See also Business and Professions Code section 6126, subdivision (a).)
 - (b) Appearing on behalf of another or performing services in a representative capacity before a tribunal in any matter pending therein throughout its various stages and in conformity with the adopted rules of procedure. (See *Birbrower, Montalbano, Condon & Frank, P.C. v. Sup. Ct. (ESQ Business Services, Inc.)* (1998) 17 Cal.4th 119, 128 [70 Cal.Rptr.2d 304, 308]; *People v. Merchants' Protective Corp.* (1922) 189 Cal. 531, 535 [209 P 363, 365]; *Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 542 [86 Cal.Rptr. 673, 677].)
 - (c) Giving legal advice and counsel to another which involves the application of law or legal principles to the specific facts and circumstances, rights, obligations, liabilities or remedies of that person or organization or of another, whether or not a matter is pending in any court. (See *People v. Merchants' Protective Corp.* (1922) 189 Cal. 531, 535, [209 P 363, 365].)
- [5] Merely holding oneself out as being admitted or entitled to practice law in California when actually not admitted or otherwise entitled to practice law in California has been held to be the unauthorized practice of law. (E.g., *In re Cadwell* (1975) 15 Cal.3d 762 [543 P.2d 257, 125 Cal.Rptr. 889]; *Crawford v. State Bar* (1960) 54 Cal.2d 659, 666 [355 P.2d 490, 494, 7 Cal.Rptr. 746, 750]. See also Rule 7.5.)

- [6] Under Business and Professions Code 6126, a member who has resigned from the State Bar with charges pending is prohibited from representing another person in a state administrative hearing, even if the state agency permits non-lawyers to practice before it. (*Benninghoff v. Superior Court* (2006) 38 Cal.App.4th 61 [38 Cal.Rptr.3d 759]. See also Rule 5.3.1.)
- [7] Paragraph (a)(2) is not intended to prohibit a lawyer from counseling lawyers or non-lawyers on how to proceed in their own matters. Paragraph (a)(2) is also not intended to prohibit a lawyer from counseling non-lawyers or lawyers not admitted to practice law in California concerning the kinds of legal services not constituting the practice of law they may provide in California.

SDCBA SUGGESTED REVISION TO PROPOSED RULE (CLEAN VERSION) 5.5

Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law

- (a) A lawyer admitted to practice law in California shall not:
- (1) practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction; or
 - (2) knowingly assist a person or organization in the performance of activity that constitutes the unauthorized practice of law.
- (b) A lawyer who is not admitted to practice law in California shall not:
- (1) except as authorized by these Rules or other law, engage in any activity constituting the “practice of law” as that term is construed under California law;
 - ~~(2) except as authorized by these Rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; or~~
 - ~~(23) hold out to the public or otherwise represent that the lawyer is admitted to practice law in California.~~

Comment

- [1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. Paragraph (a) prohibits the unauthorized practice of law by a lawyer, whether through the lawyer’s direct action or by the lawyer assisting another person in the performance of activities that constitute the unauthorized practice of law.
- [2] Paragraph (b) prohibits lawyers from practicing law in California unless admitted to practice in this state or otherwise entitled to practice law in this state by court rule or other law. (See California Business and Professions Code, sections 6125 and 6126. See also California Rules of Court, rules 964 [registered legal services attorneys], 965 [registered in-house counsel] 966 [attorneys practicing law temporarily in California as part of litigation], 967 [non-litigating attorneys temporarily in California to provide legal services], 983 [counsel *pro hac vice*], rule 983.1 [appearance by military counsel], 983.2 [certified law students], rule 983.4 [out-of-state attorney arbitration counsel program] and rule 988 [registered foreign legal consultant].) A lawyer does not violate paragraph (b) to the extent the lawyer is engaged in activities authorized by any other applicable exception. (See, e.g., 35 U.S.C. section 32(b)(2)(D) and *Sperry v. Florida ex rel. Florida Bar* (1963) 373 U.S. 379 [83 S.Ct. 1322]; *Augustine v. Dept. of Veteran Affairs* (Fed. Cir. 2005) 429 F.3d 1334.)

Guidance on what constitutes the practice of law

- [3] The definition of the practice of law is established by law and varies from one jurisdiction to another. The purpose of prohibiting the unauthorized practice of law is to protect the public and the administration of justice from the provision of legal services by unqualified persons or entities. Except as otherwise prohibited in Rule 5.3.1, paragraph (a)(2) is not intended to prohibit a lawyer from employing the services of para-professionals or other assistants and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work as provided in Rule 5.3. Likewise, paragraph (a)(2) is not intended to prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law, including claims adjusters, employees of financial or commercial institutions or entities, social workers, accountants, low cost legal service programs, and persons employed in government agencies.
- [4] In California, the definition of the “practice of law” has evolved through case law and is generally understood to include the following:
- (a) Non-lawyer providing legal advice to California resident in California, even if the advice is with regard to non-U.S. law. (*Bluestein v. State Bar* (1975) 13 Cal.3d 162, 175, [118 Cal.Rptr. 175, 183, fn. 13]. See also Business and Professions Code section 6126, subdivision (a).)
 - (b) Appearing on behalf of another or performing services in a representative capacity before a tribunal in any matter pending therein throughout its various stages and in conformity with the adopted rules of procedure. (See *Birbrower, Montalbano, Condon & Frank, P.C. v. Sup. Ct. (ESQ Business Services, Inc.)* (1998) 17 Cal.4th 119, 128 [70 Cal.Rptr.2d 304, 308]; *People v. Merchants' Protective Corp.* (1922) 189 Cal. 531, 535 [209 P 363, 365]; *Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 542 [86 Cal.Rptr. 673, 677].)
 - (c) Giving legal advice and counsel to another which involves the application of law or legal principles to the specific facts and circumstances, rights, obligations, liabilities or remedies of that person or organization or of another, whether or not a matter is pending in any court. (See *People v. Merchants' Protective Corp.* (1922) 189 Cal. 531, 535, [209 P 363, 365].)
- [5] Merely holding oneself out as being admitted or entitled to practice law in California when actually not admitted or otherwise entitled to practice law in California has been held to be the unauthorized practice of law. (E.g., *In re Cadwell* (1975) 15 Cal.3d 762 [543 P.2d 257, 125 Cal.Rptr. 889]; *Crawford v. State Bar* (1960) 54 Cal.2d 659, 666 [355 P.2d 490, 494, 7 Cal.Rptr. 746, 750]. See also Rule 7.5.)

- [6] Under Business and Professions Code 6126, a member who has resigned from the State Bar with charges pending is prohibited from representing another person in a state administrative hearing, even if the state agency permits non-lawyers to practice before it. (*Benninghoff v. Superior Court* (2006) 38 Cal.App.4th 61 [38 Cal.Rptr.3d 759]. See also Rule 5.3.1.)
- [7] Paragraph (a)(2) is not intended to prohibit a lawyer from counseling lawyers or non-lawyers on how to proceed in their own matters. Paragraph (a)(2) is also not intended to prohibit a lawyer from counseling non-lawyers or lawyers not admitted to practice law in California concerning the kinds of legal services not constituting the practice of law they may provide in California.

Proposed Rule 5.5 [RPC 1-300]

“Unauthorized Practice of Law; Multijurisdictional Practice of Law”

(Draft #8.1, 9/17/09)

Summary: Proposed Rule 5.5 amends current Rule of Professional Conduct 1-300. In substance, it continues the prohibitions in Rule 1-300 against aiding any person or entity in the unauthorized practice of law and against a member of the California bar practicing law in another jurisdiction in violation of the regulations of that other jurisdiction. However, the proposed rule adds from the ABA Model Rule prohibitions against a lawyer who is not admitted to practice in California maintaining an office or systematic presence in California and from holding out that he or she is admitted to practice law in California.

Comparison with ABA Counterpart

Rule	Comment
<input type="checkbox"/> ABA Model Rule substantially adopted	<input type="checkbox"/> ABA Model Rule substantially adopted
<input type="checkbox"/> ABA Model Rule substantially rejected	<input type="checkbox"/> ABA Model Rule substantially rejected
<input checked="" type="checkbox"/> Some material additions to ABA Model Rule	<input checked="" type="checkbox"/> Some material additions to ABA Model Rule
<input checked="" type="checkbox"/> Some material deletions from ABA Model Rule	<input checked="" type="checkbox"/> Some material deletions from ABA Model Rule
<input type="checkbox"/> No ABA Model Rule counterpart	<input type="checkbox"/> No ABA Model Rule counterpart

Primary Factors Considered

Existing California Law

Rules	RPC 1-300; Rules 9.40-9.41, 9.43, 9.45-9.48, California Rules of Court
Statute	Bus. & Prof. Code, sec. 6125-6126.
Case law	

State Rule(s) Variations (In addition, see provided excerpt of selected state variations.)

Other Primary Factor(s)

Rule Revision Commission Action/Vote to Recommend Rule Adoption

(14 Members Total -- votes recorded may be less than 14 due to member absences)

Approved on 10-day Ballot, Less than Six Members Opposing Adoption

Vote (see tally below)

Favor Rule as Recommended for Adoption 6

Opposed Rule as Recommended for Adoption 1

Abstain 2

Approved on Consent Calendar

Approved by Consensus

Minority/Dissenting Position Included on Model Rule Comparison Chart Yes No

Stakeholders and Level of Controversy

No Known Stakeholders

The Following Stakeholders Are Known:

Very Controversial – Explanation:

Moderately Controversial – Explanation:

Not Controversial

COMMISSION FOR THE REVISION OF THE RULES OF PROFESSIONAL CONDUCT

Proposed Rule 5.5* Unauthorized Practice of Law; Multijurisdictional Practice of Law

October 2009

(Draft rule revised following consideration of public comment.)

INTRODUCTION:

Proposed Rule 5.5 amends current Rule of Professional Conduct 1-300. In substance, it continues the prohibitions in Rule 1-300 against aiding any person or entity in the unauthorized practice of law and against a member of the California bar practicing law in another jurisdiction in violation of the regulations of that other jurisdiction. However, the proposed rule adds from the ABA Model Rule prohibitions against a lawyer who is not admitted to practice in California maintaining an office or systematic presence in California and from holding out that he or she is admitted to practice law in California.

The proposed Rule does not adopt either paragraph (c) or (d) to Model Rule 5.5, or most of the comment to MR 5.5 because the subject matter of those Model Rule provisions are governed by decisional law and by California Rules of Court 9.47 and 9.48, both of which were promulgated by the California Supreme Court's Multijurisdictional Practice Task Force. See Explanation of Changes for paragraph (c). The Commission did not include in Rule 5.5 other temporary practice rules that are found in the California Rules of Court (e.g., Rules 9.41 – 9.44), but did include a cross-reference to them in the Comment. See Comment [2]. Finally, the Commission did not consider several Model Rules of Court that were proposed by the ABA Multijurisdictional Practice Commission that address issues such as temporary practice by foreign nationals.

* Proposed Rule, Draft 8 (6/27/09).

<p align="center">BA Model Rule</p> <p align="center">Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law</p>	<p align="center">Commission's Proposed Rule*</p> <p align="center">Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
	<p>(a) <u>A lawyer admitted to practice law in California shall not:</u></p>	<p>Proposed paragraph (a) is an introductory paragraph to subparagraphs (1) and (2). This provision deals with two different scenarios. The first [covered by paragraph (a)] is misconduct by a lawyer admitted to practice law in California. The second [proposed paragraph (b)] is misconduct by a lawyer who is not admitted to practice in this State. Because proposed paragraph (a) deals with two different offenses, it was given an introductory paragraph for the two different offenses that are described in the subparagraphs (1) and (2).</p>
<p>(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.</p>	<p>(a1) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction; or assist another in doing so.</p>	<p>Proposed subparagraph (a)(1) is substantially the same as the first clause of ABA Model Rule 5.5(a). By drafting an introductory paragraph (a) in the proposed rule, in subparagraph (1) we were able to combine the two complementary concepts of current Rule of Professional Conduct 1-300 in one part of the proposed rule applicable to California lawyers and made the proposed rule briefer by deleting the first four words of the Model Rule. The second clause of Model Rule 5.5(a) is covered by subparagraph (a)(2). See explanation for paragraph (a)(2).</p>
	<p>(2) <u>knowingly assist a person or organization in the performance of activity that constitutes the unauthorized practice of law.</u></p>	<p>Current California Rule of Professional Conduct 1-300(A) is an important public protection rule. It subjects a lawyer who is admitted in California to discipline if he or she aids another person or entity in the unauthorized practice of law. Absent such a rule, a lawyer who commits that offense would not likely be subject to discipline in the State Bar Court. However, the Model Rule is not as explicit as the current California rule, and the second clause of</p>

* Redline/strikeout showing changes to the ABA Model Rule

<p align="center"><u>BA Model Rule</u></p> <p align="center">Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
		<p>Model Rule 5.5(a) is only a subset of the broader proscription contained in the current California rule. Therefore, the proposed rule adds current Rule 1-300(A) to Model Rule 5.5(a).</p> <p>Subparagraph (a)(2) is necessary to preserve the greater consumer and client protection that California residents have under current Rule 1-300(A). The California Rules of Court and the Legislature have greatly expanded what areas of the practice of law are "authorized" even though performed by a non-member of the State Bar of California. Notwithstanding these changes in the law, there are still individuals who will not comply with these new laws and thereby harm California residents. While unauthorized practice of law statutes may be enforced to regulate this unlawful behavior, they do not normally reach lawyers who aid and abet unauthorized practice. Regulation by the State Bar of California of lawyers who aid and abet such unlawful behavior is a necessary adjunct of such enforcement.</p> <p>Subparagraph (a)(2) adds the <i>mens rea</i> requirement of "knowingly" assisting another in the unlicensed practice of law. A lawyer should not be subject to discipline for assisting another whom the lawyer, in good faith, believes to be an active member of the State Bar or otherwise authorized to practice by statute or court rule.</p> <p>Model Rule 5.5 does not have a <i>mens rea</i> requirement. Model Rule 8.4(a), which prohibits assisting or inducing another to commit a violation of the Rules, does have such a requirement. In this respect, they are inconsistent. We have been unable to discover any reason for that inconsistency. Adding "knowingly" to proposed Rule 5.5 makes it consistent with both Model Rule 8.4 and the Commission's proposed Rule 8.4. However, the addition of a <i>mens rea</i> requirement causes proposed Rule 5.5 to diverge from both Model Rule 5.5 and current rule 1-300.</p>

<p align="center"><u>BA Model Rule</u></p> <p align="center">Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>(b) A lawyer who is not admitted to practice in this jurisdiction shall not:</p>	<p>(b) A lawyer who is not admitted to practice <u>law</u> in this jurisdiction<u>California</u> shall not:</p>	<p>Proposed paragraph (b) is substantially the same as ABA Model Rule 5.5(b). The word "law" has been added to the proposed rule to make the subject matter of the lawyer's admission explicit, and the word "California" has been substituted for the phrase "this jurisdiction" for brevity, because that is the convention used in the California Rules of Court regulating multijurisdictional practice, and because the phrase "this jurisdiction" is ambiguous in that it could refer to jurisdictions or venues within the State, when the intention is to refer to admission to practice in the State of California.</p>
<p>(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or</p>	<p>(1) except as authorized by these Rules or other law, establish an <u>or maintain a resident</u> office or other systematic and <u>or</u> continuous presence in this jurisdiction <u>California</u> for the practice of law; or</p>	<p>The practice of law in California by attorneys not admitted to practice in this State but who are temporarily in this State as part of litigation is governed by California Rule of Court 9.47. The phrase "an office" in Model Rule 5.5 has been changed in the proposed rule to the phrase "or maintain a resident office" to conform to the wording of California Rule of Court 9.47(d)(2). The phrase "this jurisdiction" has been changed to "California" for the reasons stated in the preceding paragraph.</p>
<p>(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.</p>	<p>(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction <u>California</u>.</p>	<p>The phrase "this jurisdiction" has been changed to "California" for the reasons stated two paragraphs above.</p>
<p>(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</p>	<p>(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</p>	<p>Proposed Rule 5.5 deletes paragraphs (c) and (d) of ABA Model Rule 5.5 because their subject matter is already governed by California Rules of Court 9.47 and 9.48.</p>

<p align="center">BA Model Rule</p> <p align="center">Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law</p>	<p align="center">Commission's Proposed Rule*</p> <p align="center">Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law</p>	<p align="center">Explanation of Changes to the ABA Model Rule</p>
<p>jurisdiction that:</p> <p>(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;</p> <p>(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;</p> <p>(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</p> <p>(4) are not within paragraphs (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.</p>	<p>jurisdiction that:</p> <p>(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;</p> <p>(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;</p> <p>(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</p> <p>(4) are not within paragraphs (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.</p>	<p>Model Rule 5.5(c) speaks to the subject of when a lawyer not admitted in the jurisdiction adopting the Model Rule, but who is admitted to practice law in another United States jurisdiction, may temporarily provide legal services in the adopting jurisdiction. That subject is not addressed by the current Rules of Professional Conduct or by the State Bar Act. However, it is addressed by California Rules of Court 9.47 and 9.48. Because those subjects are governed by Rules of Court, it is not necessary for the Rules of Professional Conduct to do so. In addition to the Rules of Court, judicial decisions and federal law also govern this subject. Accordingly, Model Rule 5.5(c) and (d) are not needed, and may conflict with Rules of Court, statutes, or applicable decisional law. They have therefore been deleted. However, proposed Comment [2], <i>infra</i>, refers attorneys to the relevant statutes, Rules of Court, and some federal judicial decisions. Because the California Rules of Court were amended after the first batch of proposed rules were circulated for public comment, the references in proposed Comment [2] will have to be updated.</p> <p>The Commission concluded that attempting to restate in a Rule of Professional Conduct all of the nuances of the statutes, Rules of Court, and judicial decisions in California and in federal courts would make the proposed rule unwieldy and unnecessarily long, and, because judicial decisions on the subject of unauthorized practice of law are constantly evolving, the proposed rule could not possibly be complete, even if it attempted to do so. Therefore, the brief references in proposed Comment [2] are offered for succinct guidance.</p>

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<p>(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:</p> <p>(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or</p> <p>(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.</p>	<p>(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:</p> <p>(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or</p> <p>(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.</p>	<p>See Explanation of Changes for paragraph (c), above.</p>

<p align="center"><u>ABA Model Rule</u> Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law Comment</p>	<p align="center"><u>Commission’s Proposed Rule*</u> Rule 5.5 Unauthorized Practice Ofof Law; Multijurisdictional Practice Ofof Law Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule Comments</u></p>
<p>[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer’s direct action or by the lawyer assisting another person.</p>	<p>[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to<u>prohibits the</u> unauthorized practice of law by a lawyer, whether through the lawyer’s direct action or by the lawyer assisting another person <u>in the performance of activities that constitute the unauthorized practice of law.</u></p>	<p>Comment [1] is substantially the same as ABA Model Rule Comment [1]. The second sentence is deleted from the proposed Comment because it is an inaccurate and incomplete statement of when a lawyer may practice law in the State of California under applicable statutes, Rules of Court, and decisional law. In the third sentence of the Comment to the Model Rule, the word “applies to” is not an accurate description of paragraph (a) of the rule. Therefore, in the proposed rule, the phrase “applies to” has been changed to the phrase “prohibits the.” The phrase “. . . in the performance of activities that constitute the unauthorized practice of law” has been added to the last sentence of the Comment because it makes the last sentence of the Comment a more accurate and complete summary of the provisions of paragraph (a).</p>
<p>[2] 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. This Rule 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</p>	<p>[2] 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. This Rule 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.</p>	<p>Comment [2] of ABA Model Rule 5.5 has been deleted because its first two sentences are only a generalized comment about admission to practice law throughout the United States and are irrelevant to the California Rules. The third sentence has been deleted because that subject will be covered by proposed new Rule 5.3 (addressing a lawyer’s supervision of non-lawyer assistants).</p>

* Redline/strikeout showing changes to the ABA Model Rule

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	<p>[2] Paragraph (b) prohibits lawyers from practicing law in California unless admitted to practice in this state or otherwise entitled to practice law in this state by court rule or other law. (See, e.g., California Business and Professions Code, sections 6125 and 6126. See also California Rules of Court, rules 9.45 [registered legal services attorneys], 9.46 [registered in-house counsel], 9.47 [attorneys practicing law temporarily in California as part of litigation], 9.48 [non-litigating attorneys temporarily in California to provide legal services], 9.40 [counsel pro hac vice], rule 9.41 [appearance by military counsel], 9.42 [certified law students], rule 9.43 [out-of-state attorney arbitration counsel program] and rule 9.44 [registered foreign legal consultant].) A lawyer does not violate paragraph (b) to the extent the lawyer is engaged in activities authorized by any other applicable exception. (See, e.g., 28 U.S.C. sections 515-519, 530C(c)(1); 35 U.S.C. section 32(b)(2)(D) and <i>Sperry v. Florida ex rel. Florida Bar</i> (1963) 373 U.S. 379 [83 S.Ct. 1322]; <i>Augustine v. Dept. of Veteran Affairs</i> (Fed. Cir. 2005) 429 F.3d 1334.)</p>	<p>In place of ABA Comment [2], the proposed rule substitutes a new Comment [2] that refers the public, courts, and lawyers to relevant statutes, rules of court, and federal decisions. See explanation of changes regarding paragraph (c), <i>supra</i>. The Commission endeavored to draft a definition of the practice of law in this State but does not recommend that such a definition be included in these rules. It would lengthen the Comment by at least six pages and would still not be a complete definition of what constitutes the practice of law in this State, for judicial decisions are constantly re-interpreting that concept in light of the facts of specific cases.</p>

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law Comment</p>	<p align="center"><u>Commission's Proposed Rule</u></p> <p align="center">Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule Comments</u></p>
<p>[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.</p> <p>[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).</p>	<p>[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.</p> <p>[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).</p>	<p>ABA Comment [3] is deleted from the proposed rule because it is an incomplete and inaccurate statement of the law in California regarding lawful practice by non-lawyers. See, for example, Bus. & Prof. Code §§ 6400, <i>et seq.</i>, dealing with Legal Document Assistants and Unlawful Detainer Assistants. This subject is best addressed in Rule 5.3.</p> <p>Comment [4] has been deleted from the proposed rule because it is an incomplete and inaccurate restatement of part of paragraph (b) of the proposed rule.</p>

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law Comment</p>	<p align="center"><u>Commission's Proposed Rule</u></p> <p align="center">Rule 5.5 Unauthorized Practice Ofof Law; Multijurisdictional Practice Ofof Law Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule Comments</u></p>
<p>[5] There are occasions in which a lawyer admitted to practice 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 under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.</p>	<p>[5] There are occasions in which a lawyer admitted to practice 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 under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.</p>	<p>Comments [5] through [21] have been deleted because they discuss paragraphs (c) and (d), both of which have been deleted from the proposed Rule because the subject matter is already governed by Rules of Court, Rules 9.47 and 9.48, and decisional law.</p>
<p>[6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). 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.</p>	<p>[6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). 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.</p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>

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<p>[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" in paragraph (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.</p>	<p>[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" in paragraph (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.</p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>
<p>[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.</p>	<p>[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.</p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>

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<p>[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.</p>	<p>[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.</p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>
<p>[10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.</p>	<p>[10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.</p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law Comment</p>	<p align="center"><u>Commission's Proposed Rule</u></p> <p align="center">Rule 5.5 Unauthorized Practice Ofof Law; Multijurisdictional Practice Ofof Law Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule Comments</u></p>
<p>[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.</p>	<p>[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.</p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>
<p>[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services 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. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.</p>	<p>[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services 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. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.</p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law Comment</p>	<p align="center"><u>Commission's Proposed Rule</u></p> <p align="center">Rule 5.5 Unauthorized Practice Ofof Law; Multijurisdictional Practice Ofof Law Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule Comments</u></p>
<p>[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.</p>	<p>[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.</p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>
<p>[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects 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 or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized</p>	<p>[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects 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 or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized</p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law Comment</p>	<p align="center"><u>Commission's Proposed Rule</u></p> <p align="center">Rule 5.5 Unauthorized Practice Ofof Law; Multijurisdictional Practice Ofof Law Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule Comments</u></p>
<p>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. Lawyers desiring to provide <i>pro bono</i> legal services on a temporary basis in a jurisdiction that has been affected by a major disaster, but in which they are not otherwise authorized to practice law, as well as lawyers from the affected jurisdiction who seek to practice law temporarily in another jurisdiction, but in which they are not otherwise authorized to practice law, should consult the [<i>Model Court Rule on Provision of Legal Services Following Determination of Major Disaster</i>].</p>	<p>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. Lawyers desiring to provide <i>pro bono</i> legal services on a temporary basis in a jurisdiction that has been affected by a major disaster, but in which they are not otherwise authorized to practice law, as well as lawyers from the affected jurisdiction who seek to practice law temporarily in another jurisdiction, but in which they are not otherwise authorized to practice law, should consult the [<i>Model Court Rule on Provision of Legal Services Following Determination of Major Disaster</i>].</p>	
<p>[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.</p>	<p>[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.</p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law Comment</p>	<p align="center"><u>Commission's Proposed Rule</u></p> <p align="center">Rule 5.5 Unauthorized Practice Ofof Law; Multijurisdictional Practice Ofof Law Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule Comments</u></p>
<p>[16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.</p>	<p>[16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.</p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>
<p>[17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.</p>	<p>[17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.</p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>

<p align="center"><u>ABA Model Rule</u> Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law Comment</p>	<p align="center"><u>Commission's Proposed Rule</u> Rule 5.5 Unauthorized Practice Ofof Law; Multijurisdictional Practice Ofof Law Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule Comments</u></p>
<p>[18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.</p>	<p>[18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.</p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>
<p>[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).</p>	<p>[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).</p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>
<p>[20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4(b).</p>	<p>[20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4(b).</p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>
<p>[21] Paragraphs (c) and (d) do not authorize communications advertising legal services to prospective clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.</p>	<p>[21] Paragraphs (c) and (d) do not authorize communications advertising legal services to prospective clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.</p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>

Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law

(Comparison of the Current Proposed Rule to the initial Public Comment Draft)

- (a) A lawyer admitted to practice law in California shall not:
- (1) practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction; or
 - (2) knowingly assist a person or organization in the performance of activity that constitutes the unauthorized practice of law.
- (b) A lawyer who is not admitted to practice law in California shall not:
- (1) except as authorized by these Rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; or
 - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in California.

Professions Code, sections 6125 and 6126. See also California Rules of Court, rules ~~964~~9.45 [registered legal services attorneys], ~~965~~9.46 [registered in-house counsel]—~~966~~, 9.47 [attorneys practicing law temporarily in California as part of litigation], ~~967~~9.48 [non-litigating attorneys temporarily in California to provide legal services], ~~983~~9.40 [counsel pro hac vice], rule ~~983.4~~9.41 [appearance by military counsel], ~~983.29~~42 [certified law students], rule ~~983.4~~9.43 [out-of-state attorney arbitration counsel program] and rule ~~988~~9.44 [registered foreign legal consultant].) A lawyer does not violate paragraph (b) to the extent the lawyer is engaged in activities authorized by any other applicable exception. (See, e.g., 28 U.S.C. sections 515-519, 530C(c)(1); 35 U.S.C. section 32(b)(2)(D) and *Sperry v. Florida ex rel. Florida Bar* (1963) 373 U.S. 379 [83 S.Ct. 1322]; *Augustine v. Dept. of Veteran Affairs* (Fed. Cir. 2005) 429 F.3d 1334.)

Guidance on what constitutes the practice of law

COMMENT

- [1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. Paragraph (a) prohibits the unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person in the performance of activities that constitute the unauthorized practice of law.
- [2] Paragraph (b) prohibits lawyers from practicing law in California unless admitted to practice in this state or otherwise entitled to practice law in this state by court rule or other law. (See, e.g., California Business and

~~[3] The definition of the practice of law is established by law and varies from one jurisdiction to another. The purpose of prohibiting the unauthorized practice of law is to protect the public and the administration of justice from the provision of legal services by unqualified persons or entities. Except as otherwise prohibited in Rule 5.3.1, paragraph (a)(2) is not intended to prohibit a lawyer from employing the services of para-professionals or other assistants and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work as provided in Rule 5.3. Likewise, paragraph (a)(2) is not intended to prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law, including~~

~~claims adjusters, employees of financial or commercial institutions or entities, social workers, accountants, low cost legal service programs, and persons employed in government agencies.~~

[4] ~~In California, the definition of the "practice of law" has evolved through case law and is generally understood to include the following:~~

(a) ~~Non-lawyer providing legal advice to California resident in California, even if the advice is with regard to non-U.S. law. (*Bluestein v. State Bar* (1975) 13 Cal.3d 162, 175, [118 Cal.Rptr. 175, 183, fn. 13]. See also Business and Professions Code section 6126, subdivision (a).)~~

(b) ~~Appearing on behalf of another or performing services in a representative capacity before a tribunal in any matter pending therein throughout its various stages and in conformity with the adopted rules of procedure. (See *Birbrower, Montalbano, Condon & Frank, P.C. v. Sup.Ct. (ESQ Business Services, Inc.)* (1998) 17 Cal.4th 119, 128 [70 Cal.Rptr.2d 304, 308]; *People v. Merchants' Protective Corp.* (1922) 189 Cal. 531, 535 [209 P 363, 365]; *Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 542 [86 Cal.Rptr. 673, 677].)~~

(c) ~~Giving legal advice and counsel to another which involves the application of law or legal principles to the specific facts and circumstances, rights, obligations, liabilities or remedies of that person or organization or of another, whether or not a matter is pending in any court. (See *People v. Merchants' Protective Corp.* (1922) 189 Cal. 531, 535, [209 P 363, 365].)~~

[5] ~~Merely holding oneself out as being admitted or entitled to practice law in California when actually not admitted or otherwise entitled to practice law in California has been held to be the unauthorized practice of law. (E.g., *In re Cadwell* (1975) 15 Cal.3d 762 [543 P.2d 257, 125 Cal.Rptr. 889]; *Crawford v. State Bar* (1960) 54 Cal.2d 659, 666 [355 P.2d 490, 494, 7 Cal.Rptr. 746, 750]. See also Rule 7.5.)~~

[6] ~~Under Business and Professions Code 6126, a member who has resigned from the State Bar with charges pending is prohibited from representing another person in a state administrative hearing, even if the state agency permits non-lawyers to practice before it. (*Bonninghoff v. Superior Court* (2006) 38 Cal.App.4th 61 [38 Cal.Rptr.3d 759]. See also Rule 5.3.1.)~~

[7] ~~Paragraph (a)(2) is not intended to prohibit a lawyer from counseling lawyers or non-lawyers on how to proceed in their own matters. Paragraph (a)(2) is also not intended to prohibit a lawyer from counseling non-lawyers or lawyers not admitted to practice law in California concerning the kinds of legal services they may provide in California.~~

Rule ~~1-300~~5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law

(Comparison of the Current Proposed Rule to Current California Rule)

~~(a)(A)~~ A ~~member~~lawyer admitted to practice law in California shall not ~~aid any person or entity in the unauthorized practice of law;~~

~~(1) — (B) A member shall not~~ practice law in a jurisdiction ~~where to do so would be~~ in violation of ~~regulations~~the regulation of the legal profession in that jurisdiction~~; or~~

~~(2)~~ knowingly assist a person or organization in the performance of activity that constitutes the unauthorized practice of law.

~~(b)~~ A lawyer who is not admitted to practice law in California shall not:

~~(1)~~ except as authorized by these Rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; or

~~(2)~~ hold out to the public or otherwise represent that the lawyer is admitted to practice law in California.

[2] Paragraph (b) prohibits lawyers from practicing law in California unless admitted to practice in this state or otherwise entitled to practice law in this state by court rule or other law. (See, e.g., California Business and Professions Code, sections 6125 and 6126. See also California Rules of Court, rules 9.45 [registered legal services attorneys], 9.46 [registered in-house counsel], 9.47 [attorneys practicing law temporarily in California as part of litigation], 9.48 [non-litigating attorneys temporarily in California to provide legal services], 9.40 [counsel pro hac vice], rule 9.41 [appearance by military counsel], 9.42 [certified law students], rule 9.43 [out-of-state attorney arbitration counsel program] and rule 9.44 [registered foreign legal consultant].) A lawyer does not violate paragraph (b) to the extent the lawyer is engaged in activities authorized by any other applicable exception. (See, e.g., 28 U.S.C. sections 515-519, 530C(c)(1); 35 U.S.C. section 32(b)(2)(D) and *Sperry v. Florida ex rel. Florida Bar* (1963) 373 U.S. 379 [83 S.Ct. 1322]; *Augustine v. Dept. of Veteran Affairs* (Fed. Cir. 2005) 429 F.3d 1334.)

COMMENT

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. Paragraph (a) prohibits the unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person in the performance of activities that constitute the unauthorized practice of law.

Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law
(Commission’s Proposed Rule – Clean Version)

- (a) A lawyer admitted to practice law in California shall not:
 - (1) practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction; or
 - (2) knowingly assist a person or organization in the performance of activity that constitutes the unauthorized practice of law.
- (b) A lawyer who is not admitted to practice law in California shall not:
 - (1) except as authorized by these Rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; or
 - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in California.

of Court 9.45 [registered legal services attorneys], 9.46 [registered in-house counsel], 9.47 [attorneys practicing law temporarily in California as part of litigation], 9.48 [non-litigating attorneys temporarily in California to provide legal services], 9.40 [counsel pro hac vice], 9.41 [appearance by military counsel], 9.42 [certified law students], 9.43 [out-of-state attorney arbitration counsel program] and 9.44 [registered foreign legal consultant]. A lawyer does not violate paragraph (b) to the extent the lawyer is engaged in activities authorized by any other applicable exception. (See, e.g., 28 U.S.C. sections 515-519, 530C(c)(1); 35 U.S.C. section 32(b)(2)(D) and *Sperry v. Florida ex rel. Florida Bar* (1963) 373 U.S. 379 [83 S.Ct. 1322]; *Augustine v. Dept. of Veteran Affairs* (Fed. Cir. 2005) 429 F.3d 1334.

COMMENT

- [1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. Paragraph (a) prohibits the unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person in the performance of activities that constitute the unauthorized practice of law.
- [2] Paragraph (b) prohibits lawyers from practicing law in California unless admitted to practice in this state or otherwise entitled to practice law in this state by court rule or other law. See, e.g., California Business and Professions Code, sections 6125 and 6126. See also California Rules

Rule 5.5: Unauthorized Practice of Law; Multi-jurisdictional Practice of Law

STATE VARIATIONS

(The following is an excerpt from Regulation of Lawyers: Statutes and Standards (2009 Ed.) by Steven Gillers, Roy D. Simon and Andrew M. Perlman.)

Alabama: Alabama Rule 5.5(b) is similar to ABA Model Rule 5.5(b), but Alabama limits the activities of out-of-state lawyers to mediation services, services under authority of federal law, serving as in-house counsel in nonlitigation situations, or engaging in “transactional, counseling, or other nonlitigation services” unless they are admitted to Alabama courts pro hac vice.

Arizona augments ABA Model Rule 5.5 by adding these paragraphs:

(e) Any attorney who engages in the authorized multijurisdictional practice of law in the State of Arizona under this rule must advise the lawyer’s client that the lawyer is not admitted to practice in Arizona, and must obtain the client’s informed consent to such representation.

(f) Attorneys not admitted to practice in the State of Arizona, who are admitted to practice law in any other jurisdiction in the United States and who appear in any court of record or before any administrative hearing officer in the State of Arizona, must also comply with Rules of the Supreme Court of Arizona governing pro hac vice admission.

(g) Any attorney who engages in the multijurisdictional practice of law in the State of Arizona, whether authorized in accordance with these Rules or not, shall be subject to the Rules of Professional Conduct and the Rules of the Supreme Court regarding attorney discipline in the State of Arizona.

California: California Supreme Court Rules 9.45, 9.46, 9.47, and 9.48 give lawyers admitted in other American jurisdictions limited authority to provide legal services in California. The four rules deal with in-house counsel, legal services lawyers, lawyers involved in dispute resolution, and lawyers providing other legal services in California. The California rules are less expansive than ABA Model Rule 5.5(c). In addition, two other rules--9.43 and 9.44--provide authority for lawyers who enter California to participate in arbitrations and for lawyers admitted in foreign countries to register as foreign legal consultants.

Colorado Rule of Civil Procedure 220, entitled “Out-of-State Attorney-Conditions of Practice,” is essentially equivalent to ABA Model Rule 5.5. Rule 220 permits an out-of-state attorney who is not domiciled in Colorado and has not established a place for the regular practice of law in Colorado to “practice law in the state of Colorado except that an out-of-state attorney who wishes to appear in any state

court of record must comply with [rules] concerning pro hac vice admission.” Unlike ABA Model Rule 5.5, Colorado’s Rule 220 does not restrict out-of-state lawyers to “temporary” law practice. However, Rule 220 permits an out-of-state lawyer to practice in Colorado only if the lawyer “has not established domicile in Colorado” and “has not established a place for the regular practice of law in Colorado from which such attorney holds himself or herself out to the public as practicing Colorado law or solicits or accepts Colorado clients.”

Connecticut adopts most of ABA Model Rule 5.5 verbatim, with some additions and modifications. Rule 5.5(a) adds that the “practice of law” in Connecticut “is defined in Practice Book Section 2-44A,” a lengthy and detailed court rule. Rule 5.5(a) also adds that conduct described in Rules 5.5(c) and (d) in another jurisdiction “shall not be deemed the unauthorized practice of law for purposes of this paragraph (a).”

Most significantly, Connecticut Rule 5.5(c) extends temporary practice privileges only to a lawyer admitted in another United States jurisdiction “which accords similar privileges to Connecticut lawyers in its jurisdiction.” Connecticut Rule 5.5(d)(1) applies only if the lawyer “is an authorized house counsel as provided in Practice Book Section 2-15A.” Section 2-15A(c)(1) authorizes an in-house lawyer to engage in the following activities in Connecticut:

(A) the giving of legal advice to the directors, officers, employees, and agents of the organization with respect to its business and affairs;

(B) negotiating and documenting all matters for the organization; and

(C) representation of the organization in its dealings with any administrative agency, tribunal or commission

having jurisdiction; provided, however, authorized house counsel shall not be permitted to make appearances as counsel before any state or municipal administrative tribunal, agency, or commission, and shall not be permitted to make appearances in any court of this state, unless the attorney is specially admitted to appear in a case before such tribunal, agency, commission or court.

However, §2-15(A)(c)(4) provides that an authorized house counsel “shall not express or render a legal judgment or opinion to be relied upon by any third person or party other than legal opinions rendered in connection with commercial, financial or other business transactions to which the authorized house counsel’s employer organization is a party and in which the legal opinions have been requested from the authorized house counsel by another party to the transaction.”

Drawing on ABA Model Rule 8.5(a), Connecticut adds a new Rule 5.5(e), which provides: “A lawyer not admitted to practice in this jurisdiction and authorized by the provisions of this Rule to engage in providing legal services on a temporary basis in this jurisdiction is thereby subject to, the disciplinary rules of this jurisdiction with respect to the activities in this jurisdiction.” Finally, Connecticut adds an unusual new Rule 5.5(f), which provides:

A lawyer desirous of obtaining the privileges set forth in subparagraphs (c)(3) or (4), (1) shall notify the Statewide Bar Counsel as to each separate matter prior to any such representation in Connecticut, (2) shall notify the Statewide Bar Counsel upon termination of each such representation in Connecticut, and (3) shall pay such fees as may be prescribed by the Judicial Branch.

Delaware has adopted Rule 5.5 and adds lawyers “admitted... in a foreign jurisdiction” to the authority granted

in Rule 5.5(c) and 5.5(d). Delaware Supreme Court Rule 5.55 implements the authority of Rule 5.5(d)(1).

District of Columbia retains the pre-2002 version of ABA Model Rule 5.5. In addition, D.C. has developed one of the most detailed unauthorized practice rules in the country (D.C. Rule 49). The rule contains many exceptions to the general prohibition against unauthorized practice. These include exceptions for lawyers providing legal services to the United States while employed by the United States; lawyers appearing before a “special court, department or agency of the United States” where authorized by statute; employees of the District of Columbia and lawyers practicing before “a department or agency of the District of Columbia” pursuant to statutory authorization; employed lawyers where the employer “does not reasonably expect that it is receiving advice from a person” admitted in the District; lawyers who have moved to the District for a period of 360 days while applying for admission in the District and so long as they are under “the direct supervision of an enrolled, active member” of the D.C. Bar; up to five appearances per year for lawyers coming into the district for an ADR proceeding; up to five pro hac vice applications per year; and lawyers providing pro bono services under limited circumstances. Foreign lawyers are also exempt from the UPL prohibition for “incidental and temporary” work in the District.

Florida: Rule 5.5 is based on ABA Model Rule 5.5 but has many significant differences. For example, Florida Rule 5.5(c) permits temporary practice only by lawyers who have neither been disbarred from practice in any jurisdiction “nor disciplined or held in contempt in Florida by reason of misconduct committed while engaged in the practice of law permitted pursuant to this rule.” Florida Rule 5.5(c)(3) adds that a lawyer may provide temporary legal services related to an alternative dispute resolution proceeding “if the services are performed for a client who resides in or has an office in

the lawyer’s home state.” Florida also adds a subparagraph entitled “Authorized Temporary Practice by Lawyer Admitted in a Non-United States Jurisdiction,” which largely parallels the portions of Rule 5.5 governing temporary practice by lawyers admitted in other U.S. jurisdictions.

Georgia: Rule 5.5 generally tracks ABA Model Rule 5.5, but Georgia distinguishes between a “Domestic Lawyer” (defined in Georgia’s Terminology section as, essentially, a lawyer admitted elsewhere in the United States or its territories but not in Georgia) and a “Foreign Lawyer” (defined as “a person authorized to practice law by the duly constituted and authorized governmental body of any foreign nation” but not by Georgia). Georgia adds Rule 5.5(e) to permit temporary practice in Georgia by Foreign Lawyers on terms roughly equivalent to those that govern Domestic Lawyers, provided the foreign lawyer is “a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority.”

Illinois: Supreme Court Rule 716, entitled “Limited Admission of House Counsel,” permits an out-of-state lawyer to receive a limited license to perform legal services in Illinois when the lawyer is “employed in Illinois as house counsel exclusively for a single... legal entity (as well as any parent, subsidiary or affiliate thereof)....” The legal services must be limited to (a) advising the directors, officers, employees and agents of the employer regarding its business and affairs, and (b) negotiating, documenting and consummating transactions to which the employer is a party. An in-house lawyer may not appear as counsel before any court, administrative tribunal, agency or commission in Illinois unless (a) that body’s rules authorize the appearance or (b) the body specially admits the lawyer for the particular

matter. Lawyers licensed under the house counsel rule “shall not offer legal services or advice to the public or in any manner hold themselves out to be so engaged or authorized.”

Illinois Supreme Court Rule 717, entitled “Limited Admission of Legal Service Program Lawyers,” permits an out-of-state lawyer to receive a limited license to practice law in Illinois, for a maximum of 18 months, when the lawyer is “employed in Illinois for an organized legal service, public defender or law school clinical program providing legal assistance to indigent persons.” A lawyer holding this limited license may perform legal services “solely on behalf of such employer and the indigent clients represented by such employer,” and in felony cases the lawyer may participate in the proceedings only as “an assistant of a supervising member of the bar who shall be present and responsible for the conduct of the proceedings.”

Kansas: Kansas retains the original 1983 version of ABA Model Rule 5.5 verbatim.

Minnesota: Rule 5.5(a) adds an “immunity clause” for Minnesota lawyers by providing that a Minnesota lawyer “does not violate this rule by conduct in another jurisdiction” that an out-of-state lawyer may do in Minnesota pursuant to Rules 5.5(c) and (d). Minnesota also deletes Rule 5.5(d)(1) (which governs legal services provided to a lawyer’s employer).

Missouri renumbers paragraph (c)(4) as (c)(5) and adds as Rule 5.5(c)(4) permission for temporary legal services that “are provided to the lawyer’s employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission.” In addition, Missouri Rule 5.5(d) omits paragraph (d)(2) and substantially adopts paragraph (d)(1) but requires that the lawyer have “obtained

a limited license pursuant to Rule 8.105” (quoted below). Finally, Missouri adds a new Rule 5.5(e), which prohibits the practice of law by a lawyer who has been reported to the authorities for failure to comply with Missouri’s Continuing Legal Education requirements.

Missouri Supreme Court Rule 8.105 provides:

A lawyer admitted to the practice of law in another state or territory of the United States may receive a limited license to practice law in this state if the lawyer:

(1) Is employed in Missouri as a lawyer exclusively for: a corporation, its subsidiaries or affiliates; an association; a business; or a governmental entity and the employer’s lawful business consists of activities other than the practice of law or the provision of legal services;

(2) Was conferred a professional degree in law (J.D. or L.L.B) by a law school that at the time of the lawyer’s graduation was approved by the American Bar Association.

(3) Has filed such application forms as prescribed by the board and paid the prescribed fee, which is non-refundable; and

(4) Receives the approval of the board.

New Jersey: Rule 5.5(b) permits an out-of-state lawyer to practice in New Jersey only if (among other conditions):

(2) the lawyer is an in-house counsel and complies with R. 1:27-2 [excerpted below]; or

(3) under any of the following circumstances:

(i) the lawyer engages in the negotiation of the terms of a transaction in furtherance of the lawyer's representation on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice and the transaction originates in or is otherwise related to a jurisdiction in which the lawyer is admitted to practice;

(ii) the lawyer engages in representation of a party to a dispute by participating in arbitration, mediation or other alternate or complementary dispute resolution program, 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;

(iii) the lawyer investigates, engages in discovery, interviews witnesses or deposes witnesses in this jurisdiction for a proceeding pending or anticipated to be instituted in a jurisdiction in which the lawyer is admitted to practice; or

(iv) the lawyer practices under circumstances other than (i) through (iii) above, with respect to a matter where the practice activity arises directly out of the lawyer's representation on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice, provided that such practice in this jurisdiction is occasional and is undertaken only when the lawyer's disengagement would result in substantial inefficiency, impracticality or detriment to the client.

(c) A lawyer admitted to practice in another jurisdiction who acts in this jurisdiction pursuant to subparagraph (b) above shall:

(1) be licensed and in good standing in all jurisdictions of admission and not be the subject of any pending disciplinary proceedings, nor a current or pending license suspension or disbarment;

(2) be subject to the Rules of Professional Conduct and the disciplinary authority of the Supreme Court of this jurisdiction;

(3) consent to the appointment of the Clerk of the 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; and

(4) not hold himself or herself out as being admitted to practice in this jurisdiction....

New Jersey defines in-house counsel for purposes of its Rule 5.5(b)(2) as follows:

In-House Counsel is "a lawyer who is employed in New Jersey for a corporation, a partnership, association, or other legal entity (taken together with its respective parents, subsidiaries, and affiliates) authorized to transact business in this State that is not itself engaged in the practice of law or the rendering of legal services outside such organization, whether for a fee or otherwise, and does not charge or collect a fee for the representation or advice other than to entities comprising such organization.

New Jersey Rule 1:21-1(d) provides:

(d) *Legal Services Organizations.* Nonprofit organizations incorporated in this or any other state for the purpose of providing legal services to the poor or functioning as a public interest law firm, and other federally tax exempt legal services organizations or trusts... which provide legal services to a defined and limited class of clients, may practice law in their own names through staff attorneys who are members of the bar of the State of New Jersey, provided that: (1) the legal work serves the intended beneficiaries of the organizational purpose, (2) the staff attorney responsible for the matter signs all papers prepared by the organization, and (3) the relationship between staff attorney and client meets the attorney's professional responsibilities to the client and is not subject to interference, control, or direction by the organization's board or employees except for a supervising attorney who is a member of the New Jersey bar.

New Jersey Rule 1:21-1(a) requires that every attorney practicing law in New Jersey maintain "a bona fide office for the practice of law" in any United States jurisdiction, not necessarily New Jersey. The rule continues as follows:

For the purpose of this section, a bona fide office is a place where clients are met, files are kept, the telephone is answered, mail is received and the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during normal business hours to answer questions posed by the courts, clients or adversaries and to ensure that competent advice from the attorney can be obtained within a reasonable period of time.

New York: Compare ABA Model Rule 5.5 to New York's DR 3-101, which is the same as the ABA Model Code provision.

North Carolina: Rule 5.5 does not use the word "temporary" as it appears in ABA Model Rule 5.5(c), but Rule 5.5(b)(1) forbids a "systematic and continuous presence" in the jurisdiction for the practice of law. North Carolina Rule 5.5(c)(2)(E) adds an additional category that permits a lawyer admitted in another jurisdiction to practice in North Carolina if "the lawyer is providing services limited to federal law, international law, the law of a foreign jurisdiction, or the law of the jurisdiction in which the lawyer is admitted to practice."

Ohio: Rule 5.5(c)(4) permits a lawyer to "provide legal services on a temporary basis" in Ohio if "the lawyer engages in negotiations, investigations, or other nonlitigation activities that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice."

Oregon moves Rule 5.5(d)(1) (which permits temporary legal services that are provided to the lawyer's employer or its affiliates) to Rule 5.5(c)(5), meaning that these services may be performed only on a "temporary" basis.

Pennsylvania changes the lead-in language to Rule 5.5(c) to apply to a lawyer admitted in another United States jurisdiction "or in a foreign jurisdiction." Pennsylvania Rule 5.5(b)(2) provides that a lawyer shall not hold out "or advertise" to the public that the lawyer is admitted to practice in Pennsylvania.

Utah: The Utah Supreme Court has amended subparagraph (c)(3) of Utah State Bar Rule 14-0802 (Authorized Practice of Law) to make clear that, whether or not it constitutes the practice of law, a nonlawyer who is not claiming to be a lawyer may provide “clerical assistance to another to complete a form provided by a municipal, state, or federal court located in the State of Utah when no fee is charged to do so.”

Washington: Rule 5.5(e) permits lawyers practicing in the state under the equivalent to Rule 5.5(d)(1) also to provide pro bono services to clients through a “qualified legal services provider.”

Wisconsin retains the original 1983 version of ABA Model Rule 5.5 verbatim.

**Rule 5.5 Unauthorized Practice of Law; Multi-jurisdictional Practice of Law.
[Sorted by Commenter]**

TOTAL = 8 **Agree = 1**
Disagree = 1
Modify = 6
NI = 0

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	American International Companies (by Barger & Wolen)	D			<p>It is difficult to define the practice of law and the attempted guidance is confusing and incomplete and will restrict or prohibit the common manner in which laypersons access legal information.</p> <p>Insurance claims adjusters may be precluded from providing policyholders with valuable information regarding their policies; small claims representatives and lay representatives in workers' compensation matters may be precluded under proposed rule from assisting claimants.</p> <p>A case by case approach is best and the public would not benefit from overly broad definition of the practice of law.</p>	<p>In response to each of these concerns, the Commission deleted Comments [3] - [7], in which the Commission had provided guidance on what constitutes the practice of law.</p>
2	COPRAC	M			<p>Comments [3] [7] may be misleading because they narrowly construe cases in ways that might lead lawyers to underestimate the risks of particular conduct.</p> <p>Explicit cautionary language should be added indicating that there are unique complexities in interpreting practice of law authorities.</p>	<p>Commission agreed and deleted Comments [3] - [7], in which the Commission had provided guidance on what constitutes the practice of law.</p> <p>As the relevant comments were deleted, the Commission did not make this suggested change.</p>

¹ A = AGREE with proposed Rule D = DISAGREE with proposed Rule M = AGREE ONLY IF MODIFIED NI = NOT INDICATED

**Rule 5.5 Unauthorized Practice of Law; Multi-jurisdictional Practice of Law.
[Sorted by Commenter]**

TOTAL = 8 **Agree = 1**
Disagree = 1
Modify = 6
NI = 0

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
3	Dougherty, Michele J.	M			<p>Contrary to what is suggested by proposed rule 5.5(b), the Bar does not have jurisdiction over lawyers who are not admitted in California.</p> <p>While it is appropriate to parallel the structure of the ABA rules, Rule 5.5(a) should be revised to apply only to “a lawyer admitted to practice law and an active member in California....”</p>	<p>Commission disagreed, in part, because the Commission regards the California Rules of Court regulating multi-jurisdictional practice of law as precedent for the concept that the Supreme Court exercises inherent jurisdiction over the practice of law by out-of-state lawyers who are not members of the State Bar of California.</p> <p>Consistent with the above explanation, the Commission did not make the requested revisions.</p>
4	Konig, Alan	M			<p>The comment's discussion of federal law practice is incomplete and misleading, and if case citations are listed, then the selected authorities should be revised to offer a balanced presentation of the conflicting law.</p>	<p>Commission deleted Comments [3] - [7], in which the Commission had provided guidance on what constitutes the practice of law.</p>
5	Langford, Carol M.	M			<p>The comments attempting to give guidance on the case law definition of the practice of law is confusing; a better approach might be to provide the citations without elaboration.</p>	<p>Commission deleted Comments [3] - [7], in which the Commission had provided guidance on what constitutes the practice of law.</p>
6	Liederman, Paul H.	A			<p>Comment [7] appears to be more of a rule than a comment to the extent that it can be construed to authorize the conduct of lawyers who “ghost-write” pleadings.</p>	<p>Commission deleted Comments [3] - [7], in which the Commission had provided guidance on what constitutes the practice of law.</p>

**Rule 5.5 Unauthorized Practice of Law; Multi-jurisdictional Practice of Law.
[Sorted by Commenter]**

TOTAL = 8 **Agree = 1**
Disagree = 1
Modify = 6
NI = 0

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
7	San Diego County Bar Association	M			<p>The addition of "knowing" in 5.5(a)(2) is a good change.</p> <p>Rule 5.5(b) is flawed due to the practical problem of disciplining lawyers admitted outside of California, also this paragraph falls short of stating a clear prohibition that bars non California lawyers from practicing in this state and could be improved if revised to address the ambiguity of the continuous and systematic presence standard</p> <p>Comment 7 interpreting 5.5(a)(2) should be reworded or deleted</p>	<p>No action necessary.</p> <p>Commission disagreed, in part, because State Bar staff informed the Commission that the State Bar Court is able to conduct a disciplinary proceeding, such as a default proceeding, involving a lawyer licensed outside of California and that the disciplinary order resulting from such a proceeding is forwarded to the lawyer's home bar association for consideration and action.</p> <p>The Commission deleted Comment [7].</p>
8	U.S. Department of Justice, Professional Responsibility Advisory Office (DOJ, Professional Responsibility Advisory Office)	M			<p>Under the Supremacy Clause of the U.S. Constitution, activities of federal officers and agents are free from direct state regulation</p> <p>Comment [2] should be amended to recognize existing statutory authority for Justice Department attorneys or others properly designated by the Attorney General to represent the United States in state and federal courts throughout California (see 28 U.S.C. sections 515 519, 530 and 547).</p>	<p>Commission made the requested revision modifying the citations at the end of Comment [2].</p>

