

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

TOTAL = 4 Agree = 2
Disagree = 2
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 change because this rule does not expressly govern active vs. inactive membership status. Whether an arbitrator should be enrolled as an active member, in interpreting laws and rules concerning the unauthorized practice of law is a matter of policy for the Board of Governors and is not within the scope of these rules.</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>

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

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2	COPRAC	A	Yes		COPRAC supports the adoption of Proposed Rule 5.5 and the Comments to the Rule.	No response required.
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 required.</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>
4	Office of Chief Trial Counsel	A	Yes		<p>OCTC supports this rule as it is a codification of existing law.</p> <p>Comment [1] more appropriately belongs in a treatise, law review article, or ethics opinion.</p>	<p>No response required.</p> <p>As the Commission has noted with respect to other Rules, the comments are an important part of the Rules modeled on the ABA Model Rules, providing clarification of the black letter and guidance to lawyers on how to be in compliance with their professional obligations.</p>

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