



**THE STATE BAR  
OF CALIFORNIA**

OFFICE OF PROFESSIONAL COMPETENCE,  
PLANNING, AND DEVELOPMENT

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**DATE:** September 21, 2009  
**TO:** Members of the Commission for the Revision of the Rules of Professional Conduct  
**FROM:** Randall Difuntorum, Commission Staff Counsel  
**SUBJECT:** 10-day Ballot Circulation of Proposed Rule 5.5

Proposed Rule 5.5 is being distributed for your consideration. The revisions adopted at the Commission's September 11, 2009 meeting have been implemented and approval of parts of the rule submission is being sought through a 10-day ballot procedure. At the meeting, the rule itself was approved but the Chair indicated that the Introduction would be handled by a 10-day ballot.

Approval means that the proposed new rule would be cleared for transmission to the Board of Governors with a request that the rule be adopted subject to input received on the Commission's comprehensive Final Report.

In accordance with the guidance provided by the Board, the proposed rule is presented in a comparison chart that compares the Commission's proposed rule and comment to the counterpart ABA Model Rule. The chart includes a general introduction and provides specific explanations for any departures from the ABA Model Rule. The comparison chart is provided as Enclosure 1. A clean version of proposed Rule 5.5, Draft 8.1 (9/17/09), is provided as Enclosure 2. A draft dashboard is provided as Enclosure 3. A draft public commenter chart is provided as Enclosure 4.

Pursuant to the Commission's 10-day ballot procedure, if six or more members object to this proposed rule, then the proposed rule will be placed on the Commission's next agenda for further consideration. Objections should be in writing, explaining reasons for the objection, and sent to me with copies to Lauren McCurdy and Kevin Mohr. **If less than six objections are received by 5 p.m. on Thursday, October 1, 2009, proposed Rule 5.5 will be deemed approved.**

Questions about this mail ballot may be directed to me at (415) 538-2161

Thank you.

Encs.



**Enclosure 1**

**Proposed Rule 5.5**

(Comparison Chart Showing Changes to Model Rule 5.5)



# COMMISSION FOR THE REVISION OF THE RULES OF PROFESSIONAL CONDUCT

## Proposed Rule 5.5\* Unauthorized Practice Of Law; Multijurisdictional Practice Of Law

September 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.

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\* Proposed Rule, Draft 8.1 (9/17/09).

<p align="center"><u>ABA Model Rule</u></p> <p align="center"><b>Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law</b></p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center"><b>Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law</b></p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
	<p>(a) <a href="#">A lawyer admitted to practice law in California shall not:</a></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) <del>A lawyer shall not</del> practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction; <del>or assist another in doing so.</del></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) <a href="#">knowingly assist a person or organization in the performance of activity that constitutes the unauthorized practice of law.</a></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>ABA 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</p>

<p align="center"><u>ABA Model Rule</u></p> <p align="center"><b>Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law</b></p>	<p align="center"><u>Commission's Proposed Rule</u></p> <p align="center"><b>Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law</b></p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
		<p>from both Model Rule 5.5 and current rule 1-300.</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 <del>this jurisdiction</del><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 <del>an</del><u>or maintain a resident</u> office or other systematic <del>and</del><u>or</u> continuous presence in <del>this jurisdiction</del><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 <del>this jurisdiction</del><u>California</u>.</p>	<p>The phrase "this jurisdiction" has been changed to "California" for the reasons stated two paragraphs above.</p>

<p align="center"><u>ABA Model Rule</u></p> <p align="center"><b>Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law</b></p>	<p align="center"><u>Commission's Proposed Rule</u></p> <p align="center"><b>Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law</b></p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></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 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><del>(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 jurisdiction that:</del></p> <p><del>(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;</del></p> <p><del>(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;</del></p> <p><del>(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</del></p> <p><del>(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</del></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>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 that 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</p>

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	<p align="center"><del>the lawyer is admitted to practice.</del></p>	<p>succinct guidance.</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><del>(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:</del></p> <p><del>(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</del></p> <p><del>(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.</del></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 <del>Of</del>of Law; Multijurisdictional Practice <del>Of</del>of 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><del>[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</del></p>	<p>[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. <del>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.</del> Paragraph (a) <del>applies to</del>prohibits the 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><del>[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.</del></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>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><a href="#">[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 <i>pro hac vice</i>], 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.)</a></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> 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 <del>Of</del> Law; Multijurisdictional Practice <del>Of</del> 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><del>[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.</del></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. &amp; 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>[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><del>[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).</del></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"><b><u>ABA Model Rule</u></b>  <b>Rule 5.5 Unauthorized Practice Of Law;  Multijurisdictional Practice Of Law  Comment</b></p>	<p align="center"><b><u>Commission's Proposed Rule</u></b>  <b>Rule 5.5 Unauthorized Practice <del>Of</del>of Law;  Multijurisdictional Practice <del>Of</del>of Law  Comment</b></p>	<p align="center"><b><u>Explanation of Changes to the ABA Model Rule Comments</u></b></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><del>[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.</del></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><del>[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.</del></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"><b>Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law Comment</b></p>	<p align="center"><u>Commission's Proposed Rule</u></p> <p align="center"><b>Rule 5.5 Unauthorized Practice <del>Of</del>of Law; Multijurisdictional Practice <del>Of</del>of Law Comment</b></p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule Comments</u></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><del>[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.</del></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><del>[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.</del></p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>

<p align="center"><b><u>ABA Model Rule</u></b></p> <p align="center"><b>Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law Comment</b></p>	<p align="center"><b><u>Commission's Proposed Rule</u></b></p> <p align="center"><b>Rule 5.5 Unauthorized Practice <del>Of</del> Law; Multijurisdictional Practice <del>Of</del> Law Comment</b></p>	<p align="center"><b><u>Explanation of Changes to the ABA Model Rule Comments</u></b></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><del>[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.</del></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</p>	<p><del>[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</del></p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>

<p align="center"><u>ABA Model Rule</u>  <b>Rule 5.5 Unauthorized Practice Of Law;  Multijurisdictional Practice Of Law  Comment</b></p>	<p align="center"><u>Commission's Proposed Rule</u>  <b>Rule 5.5 Unauthorized Practice <del>Of</del>of Law;  Multijurisdictional Practice <del>Of</del>of Law  Comment</b></p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule Comments</u></p>
<p>jurisdiction.</p>	<p><del>jurisdiction.</del></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><del>[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.</del></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><del>[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.</del></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"><b>Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law Comment</b></p>	<p align="center"><u>Commission's Proposed Rule</u></p> <p align="center"><b>Rule 5.5 Unauthorized Practice <del>Of</del>of Law; Multijurisdictional Practice <del>Of</del>of Law Comment</b></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><del>[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.</del></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</p>	<p><del>[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</del></p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>

<p align="center"><b><u>ABA Model Rule</u></b></p> <p align="center"><b>Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law Comment</b></p>	<p align="center"><b><u>Commission's Proposed Rule*</u></b></p> <p align="center"><b>Rule 5.5 Unauthorized Practice <del>Of</del> Law; Multijurisdictional Practice <del>Of</del> Law Comment</b></p>	<p align="center"><b><u>Explanation of Changes to the ABA Model Rule Comments</u></b></p>
<p>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 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><del>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 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>].</del></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</p>	<p><del>[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</del></p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>

<p align="center"><u>ABA Model Rule</u>  <b>Rule 5.5 Unauthorized Practice Of Law;  Multijurisdictional Practice Of Law  Comment</b></p>	<p align="center"><u>Commission's Proposed Rule</u>  <b>Rule 5.5 Unauthorized Practice <del>Of</del>of Law;  Multijurisdictional Practice <del>Of</del>of Law  Comment</b></p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule Comments</u></p>
<p>continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.</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><del>continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.</del></p> <p><del>[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.</del></p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>

<p align="center"><b><u>ABA Model Rule</u></b> <b>Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law Comment</b></p>	<p align="center"><b><u>Commission's Proposed Rule</u></b> <b>Rule 5.5 Unauthorized Practice <del>Of</del>of Law; Multijurisdictional Practice <del>Of</del>of Law Comment</b></p>	<p align="center"><b><u>Explanation of Changes to the ABA Model Rule Comments</u></b></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><del>[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.</del></p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</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><del>[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.</del></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><del>[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).</del></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><del>[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).</del></p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>

<p align="center"><u>ABA Model Rule</u>  <b>Rule 5.5 Unauthorized Practice Of Law;  Multijurisdictional Practice Of Law  Comment</b></p>	<p align="center"><u>Commission's Proposed Rule*</u>  <b>Rule 5.5 Unauthorized Practice <del>Of</del><u>of</u> Law;  Multijurisdictional Practice <del>Of</del><u>of</u> Law  Comment</b></p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule Comments</u></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><del>[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.</del></p>	<p>See Explanation of Changes for paragraphs (c) and (d) and Comment [5].</p>

**Enclosure 2**

**Proposed Rule 5.5**

Clean Version of Draft 8.1 (9/17/09)



## 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, 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.

### 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 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.)



**Enclosure 3**

**Proposed Rule 5.5**  
Draft “Dashboard”



# 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)

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## Rule Revision Commission Action/Vote to Recommend Rule Adoption

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

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Approved on 10-day Ballot, Less than Six Members Opposing Public Comment Distribution

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

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## Stakeholders and Level of Controversy

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No Known Stakeholders

The Following Stakeholders Are Known:

Very Controversial – Explanation:

Moderately Controversial – Explanation:

Not Controversial

**Enclosure 4**

**Proposed Rule 5.5**  
(Public Commenter Chart)



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

TOTAL = \_\_ Agree = \_\_  
Disagree = \_\_  
Modify = \_\_  
NI = \_\_

No.	Commenter	Position <sup>1</sup>	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
2	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>	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.
1	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>
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</p>	<p>Commission disagreed, in part, because the Commission regards the California Rules of Court regulating multi-jurisdictional practice of law as</p>

<sup>1</sup> 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 = \_\_

No.	Commenter	Position <sup>1</sup>	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
					California.  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...."	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.  Consistent with the above explanation, the Commission did not make the requested revisions.
5	Konig, Alan	M			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.	Commission deleted Comments [3] - [7], in which the Commission had provided guidance on what constitutes the practice of law.
	Langford, Carol M.	M			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.	Commission deleted Comments [3] - [7], in which the Commission had provided guidance on what constitutes the practice of law.
4	Liederman, Paul H.	A			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.	Commission deleted Comments [3] - [7], in which the Commission had provided guidance on what constitutes the practice of law.
	San Diego County Bar Association	M			The addition of "knowing" in 5.5(a)(2) is a good change.  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	No action necessary.  Commission disagreed, in part, because State Bar staff informed the Commission that the State Bar Court is able to conduct a disciplinary proceeding,

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

TOTAL = \_\_ Agree = \_\_  
Disagree = \_\_  
Modify = \_\_  
NI = \_\_

No.	Commenter	Position <sup>1</sup>	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
					<p>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>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>
	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>