

Multi-jurisdictional Practice Task Force Report and Recommendations

(Adopted by the Board of Bar Commissioners on October 12, 2001)

A patchwork of differences in initial admission, reciprocity, federal practice, transactional practices, along with the ability to electronically be in touch with all geographical areas of the nation as well as the entire globe have contributed to bring New Mexico and the national bar to face the ever-more pressing need to seek solutions for multi-jurisdictional practice (MJP). Nationwide there currently exists vague state rules creating uncertainty for attorneys and their clients.

Appointed by David N. Hernandez, President of the State Bar of New Mexico, to address the issues and concerns and to review the impact of MJP in New Mexico, the members of the task force identified distinct areas of concern and designated three sub-committees to consider and make recommendations. Members of the multi-jurisdictional task force were: Carolyn A. Wolf and Jane Shuler Gray (Co-chairpersons), David Buchholtz, John Clough, Virginia Ferrara, Richard Gregory, Robert Heyman, Orlando Lucero, Michael Murphy, Nan Nash, Steve Shanor, Carol Skiba and Mary Torres.

Subject matter was assigned to the sub-committees as follows: (1) litigation and administrative issues; (2) attorney licensing and regulation issues; and (3) transactional practice. Each sub-committee submitted its report with recommendations.

This report is a compilation and summarization of those reports and recommendations. To the extent that the sub-committees had differing recommendations on the same issue, this report contains the majority view on those issues and the amendments approved by the Board of Bar Commissioners on October 12, 2001. In addition, the task force recently became aware that the Disciplinary Board and the NM Supreme Court Code of Professional Conduct Committee have drafted amendments to NM Rule 15-301.1 that could affect litigation and administrative practice.

I. Attorney Licensing and Regulation

Area of Concern

A. Simultaneous application for admission to the New Mexico bar and another state and current policy of non-acceptance of foreign state's Multi-state bar exam (MBE), as well as need to take two different states' bar exams simultaneously.

B. Admission on motion without reciprocity versus admission based on reciprocity with foreign state.

Recommendation

New Mexico should accept scores from tests (MBE) administered in other states for a two-year period following that state's exam. In order to accomplish this, New Mexico should establish a standard score.

If states refuse to share results, then request National Conference of Bar Examiners change its policy on the release of scores. However, since each jurisdiction decides how and when its scores are released, New Mexico should develop with other dates a procedure by which scores are to be released on a timely basis.

Reciprocal admissions for attorneys licensed in a state giving reciprocity and with experience practicing five of past seven years in any state; applicant must otherwise satisfy all other admission requirements set forth in rules governing admission; applicant must be subject to character and fitness review and sign an affidavit that applicant will not engage in the practice of law until he or she is admitted to the State Bar of New Mexico.

II. Transactional Practice

Area of Concern

A. *Out-of-state attorneys who are recognized specialists in areas such as investment banking, municipal finance, complex private sector finance and commercial transactions practicing from a foreign state and giving advice, negotiating and closing transactions in New Mexico.*

B. *Out-of-state attorneys rendering legal opinions regarding New Mexico law.*

III. Litigation and Administrative Practice

Area of Concern

A. *Government lawyers employed by and working exclusively for the state but not admitted to New Mexico bar.*

B. *In-house counsel residing in New Mexico and providing legal services to a single business employer.*

C. *Foreign attorney conducting work (investigation, deposing witnesses, etc.) within New Mexico for a foreign client on a non-New Mexico litigation matter.*

D. *Foreign attorney providing advice on a New Mexico matter.*

Recommendation

Develop a "safe harbor" definition of allowable transactional practice by lawyers admitted and in good standing in foreign jurisdiction, excluding matters unique to New Mexico law. In effect, the definition of unauthorized practice of law should be changed to exclude transactional lawyers in good standing in a foreign jurisdiction unless the lawyer is advising on a matter unique to New Mexico law.

Require that local counsel be retained for exclusive New Mexico legal issues.

Recommendation

Require that government lawyers sit for the first bar exam for which they are eligible after beginning employment and require successful passage as a condition of continued employment (federal government employees should be treated as "in-house" counsel). See proposed revision to NMRA 15-301.1.

Such in-house, non-admitted counsel be required to register with the NM Supreme Court, pay acceptable fees, and be restricted as follows: no court appearances, provide legal services only to their business-entity clients/employers, submit to discipline by the NM Supreme Court; registration ceases upon termination of employment; discipline in another state would invalidate registration.

Should not fall within New Mexico regulatory review.

Require admission *pro hac vice*, with local counsel being made aware that their responsibilities are co-extensive for their mutual client. Foreign counsel should be required to pay an acceptable fee and be subject to discipline.

Pro hac vice status should not be extended if foreign attorney resides in New Mexico, regularly engages in activity in New Mexico (defined as more than two matters per year) or is not in good standing in any state.