

# Responses to State Bar of New Mexico Multijurisdictional Practice Survey

Please note that percentages are included with the response numbers for each survey question and the comments following the questions are sorted by sub-committee areas and numbered for reference.

## I. THE SURVEY QUESTIONS

#1. Reciprocal admission would be limited to those attorneys whose state of licensure has entered into an agreement with New Mexico for reciprocal admission. In other words, attorneys from "state x" would be admitted to the New Mexico bar without examination if a New Mexico attorney could be admitted in "state x" without examination.

Yes 275 (74%) No 95 (26%)

#2. Any attorney from another state, who satisfied a designated practice requirement, usually 5-7 years, could apply to the New Mexico bar without examination and be admitted "on motion."

Yes 208 (57%) No 157 (43%)

#3. Admission pro hac vice would allow admission by motion to the court to appear before it on a case-by-case basis without association with local counsel.

Yes 171 (46%) No 198 (54%)

#4. In addition to actual court proceedings, this rule would allow temporary admission in New Mexico for all activities in anticipation of or in connection with state or local administrative proceedings, arbitration, mediation, or other non-court administered alternative dispute resolution process or with respect to discovery processes outside a lawyer's licensing state or the state where the lawsuit is pending.

Yes 217 (60%) No 147 (40%)

#5. New Mexico should continue its current practice of requiring any out-of-state lawyer, wishing to practice law in New Mexico, to associate with a licensed New Mexico lawyer.

Yes 223 (61%) No 144 (39%)

#6. New Mexico should adopt a rule or law allowing lawyers in good standing in their home state who move to New Mexico to serve their corporate, governmental or other organizational employer to practice law for that employer so long as they remain employed by that employer.

Yes 226 (61%) No 142 (39%)

#7. New Mexico should adopt a rule or law that would authorize an out-of-state lawyer in good standing in his or her home state to temporarily engage in the practice of law in New Mexico.

Yes 144 (54%) No 122 (46%)

#8. New Mexico should adopt a rule or law that would allow a lawyer admitted and in good standing in any other state to open an office and practice in New Mexico, provided that lawyer met certain requirements such as a character investigation and graduation from an accredited law school.

Yes 93 (26%) No 269 (74%)

#9. Allowing out-of-state lawyers to practice in New Mexico without associating with local counsel, under certain conditions, would impact a New Mexico lawyer:

positively 25 ( 7%)

negatively 225 (67%)

not at all 85 (25%)

(See Part II for "Fill-in" responses to this question.)

#10. A lawyer travels to New Mexico to interview witnesses and examine documents in connection with litigation threatened against a client who resides in "state A." There is no process in New Mexico by which the lawyer may seek admission pro hac vice before the lawsuit is filed; however, the lawyer expects to move to be admitted pro hac vice by the courts in New Mexico if litigation commences.

A. You/your firm encounters this situation: B. This lawyer's activities in New Mexico:

regularly 28 ( 8%) should be permitted 286 (84%)

occasionally 82 (24%) should not be permitted 54 (16%)

rarely 102 (30%)

never 132 (38%)

#11. You, a New Mexico lawyer, travel to another state on behalf of a New Mexico client to negotiate the acquisition of a business, and you return to the other state on several occasions to conduct due diligence and to participate in the closing.

A. You/your firm encounters this situation: B. Your activities in the other state:

regularly 35 (10%) should be permitted 292 (88%)

occasionally 76 (22%) should not be permitted 40 (12%)

rarely 70 (20%)

never 167 (48%)

#12. You, a New Mexico lawyer, serve as in-house corporate counsel for a company located in another state which has offices and subsidiaries in several other states. You provide general business advice and negotiate and draft contracts/documents for the company and its subsidiaries. You often travel to the offices in the other states to give advice and review documents.

A. You/other members of your firm/ B. Your activity:

someone you know encounter this situation:

regularly 44 (13%) should be permitted 275 (87%)

occasionally 58 (17%) should not be permitted 41 (13%)

rarely 67 (20%)

never 169 (50%)

## II. COMMENTS RE: QUESTION #9

Multiple responses for the following:

- Accountability 2
- All of the above 30
- Competition 17
- Competition and income 11
- Income 8
- Income and opportunity 16
- Opportunity 8
- Opportunity and competition 5
- Professionalism 2
- Quality control 2

Individual responses:

- Ability to move forward with litigation - dealings in discovery and settlement.
- Accountability to courts
- Adequate representation of clients based on knowledge of New Mexico law and procedures.
- Case management, civility, competition and income
- Client employment, economics.
- Competence/higher cost of litigation
- Competency
- Competition, income, lack of accountability
- Competition; opposing counsel would be impacted by out-of-state counsel's unfamiliarity with NM rules
- Competition and maintaining high standards of professionalism through a system of recommendation, or verification of qualifications.
- Competition and image of lawyers in general if that attorney is unfamiliar with the rules
- Competition, opportunity and eventually income - also standards in other states may vary so representation could reflect negatively on lawyers in NM
- Credibility and consistency
- Costs and time increased by having to communicate with out of state attorneys.
- Decrease in the quality of practice since out of state lawyers will generally be unfamiliar with local rules as well as being unfamiliar with the latest decisions of the courts of this state.
- Discipline
- Diversity/professionalism/expanded markets and flexibility in representing interstate commerce.
- Efficient and appropriate handling of litigation
- Efficiency in process due to lack of knowledge of local rules and law
- Ethical violations.
- Expectations of competency.
- Foreign attorneys' familiarity with local practice
- Growth of the New Mexico economy generally.
- Impact on the code of professional responsibility enforcement.
- Income and opportunity - already have enough lawyers in this state – do not need more
- Income and opportunity to represent national clients
- Income, opportunity, and quality of practice
- Income, opportunity, competition, ability to protect NM bar standards
- Income, opportunity and competence of opposing counsel
- Income, opportunity, jobs, highly competitive positions
- Income and ability to maintain a New Mexico law practice

- Income, out of state competition, and differences in styles of practice (Rambo tactics on occasion)
- Income, and hurts the client.
- Income, opportunity and fairness
- Income, competitiveness, and professionalism
- Income, competition, mass tort advertisers.
- Income, opportunity, competition and loss of ethical control.
- Income, but positively with respect to competition.
- Income, opportunity, competition and more importantly, the client
- Income, reputation of lawyers.
- Income, competition and competency
- Income, opportunity, future referrals
- Income, prospective clients.
- Income, opportunity, and competition, but most importantly having acted as local counsel, when an out of state attorney comes in and doesn't know the rules, it can make it difficult if not impossible on the opposing attorney who basically has to "educate" the out of state attorney. A lot of wasted time and effort of the attorneys, court staff and judges.
- Income as local counsel; opportunity to secure legal work if no restrictions or conditions are attached such as pro hac vice applications or representation limited to a corporate employer
- Increased competition would result in improved attorney services for residents
- Increasing complexity of practice for local attorney
- Increasing opportunities, networking
- Integrity of the New Mexico Bar
- Knowledge of NM law and lower ethical standards.
- Lack of familiarity with local court rules
- Lack of knowledge of local practice rules hinders progress of a case
- Level of competence.
- Level of lawyer professionalism, income, opportunity and competition
- Loss of control over quality of law being practiced in NM
- Loss of income and unfair competition
- Malpractice danger to public - they may not know the New Mexico laws. Need to be supervised or mentored or pass Bar or course
- Negative and public perception due to increased possibility for malpractice.
- Negative public image with advertising, income, and competition. See Franklin Azar bombardment.
- New ideas and approaches to various legal issues
- No familiarity with our course of dealings; competition and professionalism.
- No impact
- Not knowing local rules and reflecting badly for NM lawyers.
- Opportunity, competition, and collegiality of NM bar members
- Opportunity, income, potential abusive practice that is not condoned by local practice or rule
- Opportunity to work on major cases.
- Opportunity, public perception of all lawyers based upon unregulated out of state lawyers actions, possible "gorilla warfare" tactics making Rambo tactics.
- Opportunity and competition will lead to income loss.
- -Opportunity, maintaining NM standards of profession, threatening local modes of practice.
- Opportunity, competition, poor service to New Mexico clients
- Possible income
- Practice of law by dedicated and competent attorneys.
- Professionalism, opportunities
- Public perception of all competency.
- Reputation of attorneys
- Standards of consistency and care
- Standing in the community.
- Time in Court, and public attitude toward attorneys
- Time spent non-productively in litigation and substantive legal areas
- It would impact the Courts

- In most cases, it is difficult to deal with an attorney in another jurisdiction – local accountability is an issue
- Since I am unemployed, I cannot answer questions 10-12
- But so what? We are not a cartel!
- Both good and bad: variety of approach, skills, etc; but I'd reduce income and cause delay through unfamiliarity with local rules and law.
- (Positively) in providing specific representation to clients in specialized areas where a local counsel is unavailable
- I guess all, but I was thinking in terms of opposing counsel not knowing local practice.
- The present rules are anti-competitive. I'm for what serves the client best, not local lawyers.
- However, may impact clients.
- I don't understand question 9.
- Would improve the quality of legal services for New Mexicans.
- It is hard enough to regulate lousy local attorneys
- But minimally, if reciprocal
- The big NM firms only seem to hire out of state grads anyway. There probably would be little difference. Our home turf is already adversely impacted.
- Any effect on a NM lawyer's income is an unlawful anti-competitive effect, and therefore, an improper basis for retaining the rule.
- NM lawyers have more difficulty if such attorney was opposing counsel unfamiliar with local rules, customs, etc.
- Some states do not require the same ethical conduct from their attorneys. For example, I come across Texas attorneys who pay New Mexico clients cash incentives to sign their firms in contingent fee litigation. This is legal in Texas but improper here.
- The "under certain conditions" term makes this too obtuse to answer.
- Undermining confidence in the training received by New Mexico lawyers
- I'm less concerned about the competition aspect than about the ability of the non-resident lawyer to become aware of and adhere to local requirements and practices in court proceedings.
- This is an "anything is possible question" – pick an answer, they all are correct.
- Most out of state practitioners would voluntarily associate local counsel. However, practitioners who reside near the borders of NM and have multijurisdictional practices would be spared the inconvenience and expense to their clients of unnecessary local association.
- The out of state lawyer's professionalism, ethics and competency and attitude toward NM lawyers.
- In certain cases, foreign attorney wouldn't know local practice.
- By increasing competition from lawyers not licensed in New Mexico and diminishing the value and importance of a New Mexico license.
- Impacts could be positive or negative and are difficult to predict.
- The extra burden of litigating against lawyers unfamiliar with our laws and rules.
- Depending on conditions -competition, opportunity, income, practice standards.
- Changes in latitudes, changes in attitudes.
- Nothing but megafirms with no ties to NM would handle all significant matters.
- Dealings on cases, logistics, availability for informal and other meetings.
- The best reason to associate with local counsel is to be familiar with local courts or agencies.
- It might take business away by having corporate counsel coming in-state, but good lawyers will have work.
- All. Let's get something for NM attorneys. Freely admit with normal checking for reciprocity with that state for NM attorneys going there.
- Aren't we supposed to be protecting the public and not engaging in restraint of trade?
- At least one hopes those who know judges would favor procedural rules.
- All three - We should stop using Bar admission as an anti-comp. weapon. It is inherently unethical.
- Under question 9, it would impact the judicial system since out-of-town lawyers generally don't know the local rules
- Question 9 is really slightly misleading. Of course, this would be negative for New Mexico lawyers, but it's the right thing to do. And it's reality. If we want lawyers as a whole to be hurt, we will keep tight restrictions and let accountants get all the legal work.
- More concerned with #9 and their (New Mexico lawyers) impact on clients. Association with local counsel increases awareness of NM nuances.
- #9 is looking dangerously protectionist.
- These questions don't go far enough. Multijurisdictional barriers should be eliminated completely. Let New Mexico be a trendsetter in this area, not a follower.

- The opinions of economically self-interested lawyers should count for nothing here - only the public's interest in having competent counsel. Most arguments from self-interest are disguised as concerns about competence.
- First, I commend the Board of Bar Commissioners for their good judgment in appointing a task force to consider the issues as indicated. Secondly, I urge the Task Force to extend beyond mercenary considerations in their examination of the issues presented.
- I am licensed in Texas (where I primarily practice) and New Mexico (where our firm is based). All members of the NM Bar should appreciate that due to the small number of members, the accountability (and therefore the professionalism, integrity, and willingness to cooperate) of NM lawyers is much higher in NM than any place I have seen. Please don't take that for granted. I would really hate to see that change. It would of course change if these rules opening up the practice were adopted. I think you would be opening a Pandora's box and you would much regret it later. Thank you for allowing us this input.
- I would love to see New Mexico become a leader in allowing multijurisdictional practice.
- Interstate practice seems inevitable, given the mobility of current life. It may have some negative consequences, such as out-of-state lawyers poaching good cases, but I think it will be beneficial overall. I've taken 3 states' bar exams, and find the whole process unnecessarily burdensome and repetitive.
- This is a relatively difficult financial state to practice in. We need to limit attorneys to those in the state.
- In this era of rapidly expanding interstate commerce and other dealings, counsel should be permitted to work in any state where their services can be effectively delivered or are otherwise needed by an existing or prospective client. Perhaps the time has finally come to begin doing away with at least some protectionist aspects of the bar admissions process. One issue which should be re-examined is whether strict limitations on multi jurisdictional practice are premised primarily on protection of legal services consumers or protection of local attorneys' cash flow.

### III. GENERAL COMMENTS RE: ATTORNEY LICENSING AND REGULATION

- a) Because the University of California manages the atomic energy facility at Los Alamos, the State of California avails itself of the benefits and protections of New Mexico laws, but Los Alamos employees' children and dependents are still able to pay in-state tuition at UC and CSU schools, and Los Alamos employees can have California license plates and maintain California residency. If a part of California can exist inside New Mexico, why can't New Mexico receive preferred treatment by the State Bar of California attorneys, and why can't New Mexico attorneys be admitted to the State Bar of California without examination? The State of California avails itself of the benefits of the laws of New Mexico without reciprocally shouldering some burdens, i.e. by allowing New Mexico attorneys to be admitted in California without taking the California Bar exam.
- b) Licensing or supervision of state law matters is necessary to protect the public. Federal law only is a different matter, i.e. immigration law. A mandatory course on New Mexico state law is a minimum if motioning in with supervision or allowed to practice to protect the Bar and public from minimum competency. Bar fees are excessive for those who must pay several Bar dues but typically practice in only one jurisdiction with limited funds.
- c) With internet and complex communications, increasing numbers of us have out-of-state clients and out-of-state meetings. Lawyer competency should/must be ensured, but parochialism is out-of-date. New Mexico in particular has got to start recognizing other states licenses.
- d) Although other states conceivably enforce their ethics rules, New Mexico does not, and "new" attorneys (new to NM) would shortly discover this – would eventually give NM a bad reputation (worse) that attorneys here may lie, lie to Courts, violate the ethics rules, and continue to practice and profit.
- e) Reciprocity with neighboring states would be very helpful, i.e. Colorado, Arizona, Oklahoma, and Wyoming.
- f) I remember when I took the Bar in 1983. We only had to take the "local" part of the Bar exam (essay) not the multi-state. The rationale was we needed to be familiar with New Mexico practice and law. What a joke it was! Not one of the 12 essay questions asked a question about New Mexico law, or even how the general question asked (i.e. corporations) would be impacted under New Mexico law. So I don't think the Bar has ever required express knowledge of NM law to be admitted.
- g) As a government attorney, I practice in multiple jurisdictions with the understanding that I am bound by the laws, rules, and ethical guidelines of each jurisdiction in which I practice, as well as those of the states in which I am admitted to practice. My concern about multi-state practice relates primarily to whether an out-of-state lawyer will abuse a relaxed standard by either failing to determine the applicable legal standards or by evading admissions requirements.
- h) I favor a more democratic access which allows all qualified attorneys to practice law in a state that also recognizes similar principles of law, as virtually all states already do.
- i) The people of New Mexico, as well as the Courts, are entitled to attorneys who have proven a knowledge of New Mexico law!!

j) I was licensed in another state for several years before taking and passing the New Mexico bar several years ago. At the time I took the bar and as I encounter newly licensed NM attorneys, I am disappointed that this state would require a full three day bar exam with so little information relating to New Mexico law or procedure. When requiring an attorney to sit for the bar again, the state should test basic competency in procedural rules and general state law. Using multistate and uniform (not law anywhere) rules on the bar exam defeats what should be our main purpose (competency) of testing out-of-state attorneys. Also not allowing the use of the MBE portion from another jurisdiction should be reviewed. Many jurisdictions allow a MBE taken during the same testing cycle or an MBE with a very high score (top 10, 15 or 25%) to be used in conjunction with a test of their own substantive law and procedure. These are good ideas that work. The current New Mexico testing system appears broken, but reciprocity, (although economically desirable to New Mexico attorneys who would benefit from practicing out of state) or generic testing (such as now exists) does not protect the standards of competency and legal knowledge which the citizens of New Mexico should be able to expect. In my opinion, the state should allow admission based on EITHER an individual review of each applicant based on an established set of standards for 1) performance in prior legal education (law school), 2) inclusion of successful test scores on multi-state portions taken elsewhere.

k) I'd like to know which states would admit NM attorneys on motion if #1 were adopted.

l) Every lawyer should have to pass the bar exam before being allowed to practice plus all other requirements.

m) You might also consider multi-state scores as a means of determining admissions.

All yes answers contingent on coequal reciprocity provisions from state of licensure for NM attorneys.

n) I strongly believe New Mexico should have a reciprocal agreement for admission of lawyers.

o) I believe the key is reciprocation. In small markets like New Mexico my clients have no alternative but to seek regional, national and international sales. They cannot afford local counsel in each jurisdiction when they already have trained counsel on salary. I also believe that more experience outside the state prevents an insular and out of touch approach to commercial and litigation practice.

p) We need to be less provincial; the practice is becoming too complex to permit state boundaries to interfere.

q) On the one hand, we are more mobile and state boundaries mean less and less. On the other, a small bar such as NM could be overwhelmed by "outsiders" unfamiliar with local rules, customs, personal relationships, etc. Distinguish the multi-state clientele from "free lance" intruders.

r) I would support liberal practice requirements so long as the attorney is subject to NM rules governing Professional Conduct and to sanctioning by the NM Disciplinary Board and NM Supreme Court. Quality control is the key factor.

s) I think that the fact that you have a national exam (the multi state) has eliminated the need and utility of individual admissions. I support some controls on admissions, but directed to weeding out major criminals and rip off artists.

t) I will probably have to move to Texas soon to care for my (88 years) aging father. I am over 60 years of age also, and am not about to study for and take the Texas Bar exam, but it would be nice to do limited practice in Texas if necessary. We need "reciprocity" with more states to benefit our attorneys as well as theirs. (Apparently we still have not reciprocity with Texas?)

u) This survey does not address the situation of attorneys such as myself who practice outside of NM but who have clients or matters that have required that we be admitted in NM. Although I did take and pass the NM Bar exam so that I could do this work, I don't believe others should be forced to (?).

v) There should be some hurdle to becoming a NM attorney and subject to the NM bar standards but that hurdle should not limit the interstate practice of law that currently exists in any given case.

w) I think once a lawyer is licensed in one state s/he should be able to be licensed in another state upon taking that state's portion of the bar exam, not having to retake the MBE, MPRE, etc. I am uncertain how open competition from other states would affect hourly rates and income. It could generate more revenue as out of state clients might seek New Mexico attorneys because their rate is lower or the reverse, out of state attorneys would not associate with local counsel, eliminating some work and further depressing an already salary stagnant profession.

x) If someone is licensed in any other state, they should be able to practice in NM. This should be reciprocal. There should be no discrimination between and among states. This is after the United States.

y) I am DELIGHTED to see that the Bar is reconsidering our reciprocal admission rule.

z) I have several concerns or thoughts regarding unrestricted admission of all out-of-state attorneys:

(1) Unrestricted temporary admission on a pro hac vice basis will negatively impact professionalism. Because New Mexico is a small state with a relatively small population of attorneys, most attorneys act in a professional and civil manner knowing that they will face you in different cases over the years. I have noticed over 15 years of practice that initially many incoming attorneys from more populous states are less professional and are inappropriately aggressive until they realize that their conduct cannot be hidden by the anonymity that numbers provide and the safety net provided them by the knowledge they'll likely never have another case against you. Familiarity may breed contempt but it also breeds civility, cordiality and professionalism.

(2) Let's not make a joke of our bar exam and render it meaningless. Some states have easier or non-existent exams or less stringent pass rates on their exams. Unrestricted admission would permit observant law students to avoid New

Mexico's bar exam by allowing them to take an easier bar exam elsewhere, pass it, and then apply for membership here. On the other hand, reciprocity agreements and reciprocal admission with other states should allow the state bar to review other states' testing requirements in order to verify the rough equivalency with New Mexico's test. If the other state has similar testing (e.g., use of the multi-state), then we ought to allow admission of those attorneys who have passed that exam.

(3) For those out-of-state attorneys from states with which NM does not have reciprocity agreements who have practiced more than five years, NM should have an abbreviated (½ day) bar exam covering issues specific to NM (community property, the Duran Decree, and whether Judge Sutin was a crank or a visionary prophet, as examples).

(4) Let's be practical. The situations posited in Questions 10, 11, and 12 should be permitted to out-of-state attorneys in New Mexico as well as New Mexico attorneys leaving the state.

Thanks for the opportunity to provide comments.

aa) Re Question 6: Do not limit to so long as remain employed by that employer. One may change jobs to work for another employer or lose the job and may find a job with a NM firm. Admission should be admission. I left my home state of NM (where I was first licensed) and moved around the US with various corporations becoming licensed in Texas (no longer maintained) Colorado and California. I can see both sides. Texas had a "temporary" license if one then practiced for a subsequent 12-month period in Texas at the time I was admitted there. I believe that procedure is no longer in use. I appreciated being admitted on motion in Colorado based upon a character investigation and upon reference check. Having to take the bar exam in California 16 years after graduating law school was a bit much, but I survived them all. I also understand concerns that my friends and colleagues who practice in NM may have about throngs of out of state attorneys flocking to the Land of Enchantment just to make a buck.

bb) The one caveat I would suggest as to the potential change noted in question number 8 is to require that the out-of-state attorney have practiced in the other jurisdiction for a minimum number of years (e.g. fifteen) and not have been the subject of any successful disciplinary matter or malpractice suit. In this manner we could assure that New Mexico consumers of legal services could acquire competent, experienced, ethical counsel through a more open admissions process. In terms of reciprocity, surely the states, or at least the western states, could arrive at some consensus about the number of years of active practice which would serve as the minimum requirement for admission without examination (but with background and law school checks).

cc) It would be great for New Mexico to have reciprocity with a sister state like Arizona in admitting to the Bar. It would be ideal if all Western states would allow reciprocity to their bar members since lawyers are more mobile nowadays.

dd) My concern is not so much the impact on the lawyer, but the impact on the public. The legal profession has a duty to err on the side of being conservative and local when it comes to licensing, when one considers that licensing lawyers is not just asking them to take a knowledge test, but includes a character and fitness examination and, in some cases, investigations and hearings.

ee) Minimal safeguards, such as a good standing requirement in another state, should be sufficient together with the ethical obligation of an attorney not accept an engagement he is not qualified for without associating with an attorney who is. The need for flexibility is greater in corporate practice and protection of the public from "fly by nights" isn't implicated there.

ff) Unless and/or until the ABA and/or all U.S. states agree to truly national licensure (and I believe this should become the system), then small states like NM should, in my opinion, continue requiring all attorneys practicing within their borders to be licensed in such state.

gg) Reciprocal state agreements are the best idea. Admission by motion if an attorney has a certain number of years (preferably 7) also makes sense. Anything looser than that could cause problems with competition and quality of service.

hh) I believe that New Mexico as well as other states should rely on the multi-state bar exam for admittance. There should only be one bar exam - a national one. We all need to be free to move about the country to practice where we like. I think there should be a national test or "universal test" but that each state still require application to practice. The requirements of professionalism, good standing, character fitness, etc., may still be used to screen applicants, and of course admission fees may still be assessed. But I find it absolutely ridiculous that if I am admitted to practice in New Mexico, I basically am confined to NM. Who wants to take another bar exam? I don't, and let's not kid ourselves, it was a very burdensome experience. I am in favor of reciprocity, and admission on motion, and waiver, and anything else that gets our profession out of the dark ages.

ii) Should not be permitted to render legal advice unless admitted to practice in that state, either by motion pro hac vice or general admission without examination.

jj) I am licensed in Colorado and I was admitted on Motion after five years of practice. One of the best lawyers that I ever knew—he argued three cases successfully before the U.S. Supreme Court failed the NM Bar exam even though the crucial written exam question answer was almost identical to his—he failed that question and it could not be reviewed. Let's get to the 21st century.



kk) This is 2001, and borders are disappearing, reciprocity or allowing lawyers who are in good standing with their home state bar exam to practice law in New Mexico—under certain conditions, such as the length of time in practice, should be allowed.

ll) Perhaps there might be a rule that, in addition to a 5 year length-of-practice requirement, a petitioner for a pro hac vice admission would need to provide the court with names of two judges and two opposing counsel with whom s/he has worked in the last two years, along with contact information for these worthies. This would allow the NM court to conduct an efficient investigation into the petitioning attorney's character and ability.

mm) I would be in favor of reciprocity. As a New Mexico attorney, I am interested in practicing in other jurisdictions and offering reciprocity would make that process easier.

nn) Lawyers licensed in New Mexico but residing in other states should not be treated as second class citizens. In my experience, those lawyers are at the top of the profession academically, ethically, and in ability. Participation by such a group should be encouraged. All will benefit.

oo) The cost to take the entire Bar and the time to study is excessively prohibitive. Once an attorney takes the multistate they should not have to do so again. At the most (another option not in the survey) we could waive the multistate and have attorneys simply take the essay portion (applicable to NM law).

pp) New Mexico needs to eliminate its protectionist policies in every area, including the State Bar.

qq) I believe that requirements for admission to the NM Bar should be reduced and relaxed to increase mobility and competition among lawyers (even while recognizing that this will detrimentally effect some current NM lawyers). At the same time, in order to protect the ability of the courts and the legal profession to be self-regulating, I believe that current requirements that out-of-state lawyers must associate with NM lawyers should be retained.

rr) I am also admitted in Illinois, and I adamantly believe that state-by-state licensing of attorneys is overdone. New Mexico has a particular legal culture, but the state should not insulate itself from the rest of the country. Attorneys from other states should be allowed to practice in New Mexico, provided of course that any wrongdoing they perpetrate in New Mexico should be reflected on their record in their home state.

ss) What are the identifiable problems with the current rules on admission of out of state practicing attorneys? Is there an epidemic we don't know about? How much of this is prompted by issues of professionalism between attorneys in competing positions?

tt) There are already too many out of state attorneys taking work away from NM attorneys. The Furr's bankruptcy is a great example. Without reciprocation, make them take the bar. I am a NM and TX licensed attorney who had to take the NM bar after 10 years of practice in TX.

uu) Let's all grow up and face the realities. Our country has shrunk. I enclose documentation of my own recent experience. I think the Nevada Disciplinary Counsel doesn't know how to read a case.

(Editor's Note: The member enclosed correspondence in which he was the subject of a UPL complaint.)

vv) Currently, it appears from my experience that out-of-state attorneys abuse the pro hac vice rules. I feel that there needs to be some kind of licensing (preferably reciprocal) for out of state attorneys and abolishment of the current pro hac vice rules.

ww) This is a really bad idea! This will not benefit New Mexico citizens or lawyers.

xx) I strongly believe New Mexico should participate in reciprocal bar admissions with other states and admissions on motion. I personally have felt trapped in New Mexico because of our isolationist rules. Free trade of professionals can benefit all states. Rules and checks are fine to ensure that the public is not harmed.

yy) What about allowing a multi-state score from another state to be used?

zz) I can speak to this as a lawyer who had to take the NM bar exam in 1994 in order to move my practice here originally. NM should allow reciprocity only for those states that allow reciprocity for NM lawyers. NM should have some sort of pro hac vice procedure. Although NM lawyers will likely object to any rule which does not require association with a NM lawyer, such a rule would not seriously harm NM lawyers. I strongly object to any rule which allows all law school grads passing the Bar anywhere to automatically practice in NM. That relies way too much on the screening procedures of other states as to character and provides for the possibility of abuses if a state were to adopt a bar exam which is too lenient. The character and fitness review is paramount given the poor reputation of lawyers in NM already within the general populace. Thank you.

aaa) Currently, the quality of NM lawyers is low. Our reputation is poor. Any change should be to enhance the quality of the professional services provided. Being a lawyer should mean something.

bbb) Question #2 should be permitted, but only where the lawyer establishes residency in NM!

ccc) I recently passed the NM Bar after practicing in IL since 1967. I was no more prepared to practice in NM after passing the Bar than I was before.

ddd) Open it up. Better for all our clients and for almost everyone.

eee) Attorney fees charged by lawyers in NM are low. Allowing other lawyers in without passing our bar makes matters worse.

- fff) The underlying issue is reciprocity among the various states. As you know, CA (Supreme Court ) recently made it law that virtually any contact with a client in that state is the unauthorized practice of law.
- ggg) Consumers of legal services will benefit from more open admission requirements for attorneys.
- #1 has nothing to do with fitness to practice law, #4 should be 2 questions and the second half of that question I would answer "no". #9 is looking dangerously protectionist.
- hhh) Current rules of admission to state bars are unwieldy and fail to take into account the exigencies of modern, multijurisdictional practice such as that occurring in class actions and/or complex litigation.
- iii) We probably should consider a system similar to CA's that tests basic knowledge of deadlines and basic court rules. Such rules ought to be freely available on the internet.
- jjj) We produce enough bad lawyers on our own without opening the doors to new ones from other states.
- kkk) We need reciprocal arrangements with more states, especially the more populous ones like California, Washington, D.C. and New York.
- lll) We have too many lawyers in New Mexico. We should not make it easy to practice law here. Of course, I felt differently when I was facing taking the bar here even though I was licensed in 3 other states. However, now that I have become a member, I think others should have to pass the bar just like I did.
- mmm) I support allowing attorneys with 5 years experience to motion for admission. This would then allow New Mexico attorneys to motion for admission in other states.
- nnn) My basic philosophy is to be the least restrictive as possible in allowing lawyers admitted, in good standing, and 5-7 years experience in at least one state to practice in New Mexico. However, they should be subject to our disciplinary board and its rules - thus they could be prohibited by the Supreme Court of New Mexico from practicing, if in the disciplinary rules.
- ooo) I believe that reciprocity should be allowed. There should be some means of monitoring/supervising out-of-state attorneys.
- ppp) I think it is about time that a lawyer duly licensed in his residential state, who remains in good standing in that jurisdiction should be allowed to be admitted on motion, wherever he resides!
- qqq) Permitted activity so long as it concerns interpretation and application of New Mexico law.
- rrr) Because of New Mexico rules, a lawyer who is in good standing and has practiced many years finds this background useless if he or she moves. New Mexico lawyers should not be penalized because they choose to start their careers in New Mexico. Making someone take a bar exam after 5 – 10 years of practice is unfair.
- sss) Cross jurisdiction work should be allowed but only with jurisdictions that reciprocate with New Mexico. Not only States, but Indian Nations and Pueblos.

**ALSO SEE Comments b), f), o), s), w) x), bb) cc) ff) & hh) in**

**Part IV. Litigation and Administrative Law; Transactional Practice**

**IV. GENERAL COMMENTS RE: LITIGATION AND ADMINISTRATIVE LAW**

**and/or TRANSACTIONAL PRACTICE**

- a) Pro hac vice and association with local counsel are traditional ways of insuring knowledge or, at the very least, accountability for out-of-state lawyers. The reality is that interstate business transactions, wide-spread discovery, computer technology, conference calls, and the provision of mixed business and legal advice blur jurisdictional boundaries and make it difficult to determine what constitutes the practice of law in a particular state.
- b) One should be allowed to act in a foreign state only with respect to matters that are extensions of in-state litigation (e.g. depositions) or are in-house business matters concerning your employer. Litigation with a non-admitted attorney is usually a disaster from a procedural point of view, and the substantive areas of at least New Mexico probate and real estate seem totally foreign to a large number of attorneys from other states. Any type of practice reciprocity is simply asking for trouble. This is my personal experience; it is not an opinion based upon what I think might occur.
- c) I engage primarily in a products liability defense practice, and work with national coordinating or corporate counsel who have various degrees of involvement in my cases.
- d) Corporate counsel, obviously, cannot be members of the Bars of all 50 states, and should not be required to engage 50 local attorneys with regard to general business and legal advice. In major or unusual transactions, they should seek local assistance—particularly in litigation, real estate purchases, etc. However, corporate counsel for large companies would have virtually no substantive role if they were required to retain local counsel every time they needed to advise their corporation.
- e) The local counsel requirement benefits not only our firm, but also the client. Lawyers from other jurisdictions, usually in bigger cities, often are too quick to make assumptions for hearings far less prepared than the Judge or opposing counsel. We (and most local counsel) quickly dispel these misapprehensions. For the protection of the client, New Mexico counsel must be involved in litigation matters. From a litigation perspective, we, in New Mexico, also enjoy a level of professionalism and cooperation among lawyers than other states (including California, where I

- also am admitted). I fear that we would lose professional trust (and behavior) if out-of-state lawyers were not required to associate.
- f) However, I support the current rules, which do not seem to require a formal motion for admission pro hac vice, so long as resident counsel is associated. Also, I would support some level of reciprocity, or lessened Bar Exam requirements for attorneys who had practice "x" number of years without discipline in another state.
- g) Questions No. 10, 11, and 12 are not set up in a way to obtain proper answers. There should be 3 possible answers to part B of Question 10, 11 and 12. The activity could be permitted under certain circumstances, such as association with a NM law firm. On several occasions, I have had to deal with out-of-state attorneys representing out-of-state clients regarding business conducted in NM. The process has been hindered by the lack of a NM attorney representing the out-of-state company. Often the out-of-state attorney delays bringing in a NM licensed attorney in order to "save money" or "speed things up." Quite the opposite happens -- generally settlement documents have to be re-reviewed and re-negotiated before they can be presented to the court because the out-of-state lawyer is not aware of NM law or NM interpretations of uniform laws. As opposing counsel, I cannot advise the out-of-state company - I find myself recommending that a NM attorney be consulted, but most out-of-state attorneys I've discussed this with seem more concerned about preserving their singular relationship with their client. It would be better to be able to let them know that NM Bar rules require association from the very beginning, and that if I participate in negotiations without a NM licensed attorney I would be assisting in the unauthorized practice of law. I'm sure then, that the out-of-state companies would move to ensure that a NM firm is engaged for purposes of association.
- h) Although I understand the desire to protect in-state lawyers and in-state standards of practice, I favor a "rule of reason" approach for discovery and non-litigation/business activities, and I feel that pro hac vice admissions should be allowed on a case-by-case basis, as long as the privilege is not abused by a particular practitioner.
- i) Counsel are usually in house and work with local litigation counsel. This allows a uniform position to be taken by the client, and association with local counsel allows advice to comply with local practice and rules.
- j) Multijurisdictional practice was a huge problem at my former firm in Wyoming. Unfortunately, the firm did not regularly associate or utilize local counsel in their dealings in numerous Western states. Ultimately, it is the client, not the lawyers, who suffers from limitations brought on by multijurisdictional practice. With my firm there was one malpractice suit and another lawsuit, mostly resultant from the fact that the lawyer involved was not aware of particular nuances in the foreign state. Another example is entity formation. My firm formed entities in many jurisdictions, for the most part the entity was formed correctly, however, on one occasion the filings did not pass muster, which resulted in a significant tax problem. The only way to adequately protect clients in foreign jurisdictions is to associate with local counsel and actually utilize some of their expertise. Alternatively, take the bar or have someone in your office take the bar. Associating with local counsel is not all that prohibitive in comparison to the risks a client takes in using counsel who is not familiar with state law and procedures. My practice is active in six western states. As such, I am licensed in three jurisdictions and have local counsel relationships in the other three. Utilizing local counsel allows the client to have a resource on the ground, rather than miles away.
- k) As an attorney for the state in water right matters and in interstate water issues, I caution allowing attorneys representing other states (read Texas) being allowed admission to practice in NM, no matter how limited; doing so would make suit against NM more likely if the work could be done prior to suit being filed.
- l) If the Supreme Court is concerned about professionalism, then it must insist that lawyers that practice litigation in NM are licensed or have local counsel. Talk to Judge Clingman in Lovington about a Texas attorney or California attorney who even with local counsel (Eric Coll) had to give a stern speech to correct an abuse of practice.
- m) Questions 10-12 should be conditioned upon, "in conjunction with local counsel."
- n) Activities conducted in another state should include the use of a local counsel; activities conducted in New Mexico by an out-of-state counsel should include the use of a local counsel.
- o) Should not be permitted to render legal advice unless admitted to practice in that state, either by motion pro hac vice or general admission without examination.
- p) My attitude is much more liberal about a lawyer's ability to perform tasks which are not dependent upon state or local law or procedures, than about tasks which are dependent. For example, it seems to me that negotiating a purchase agreement would probably not be much different from state to state. Trying a jury case, however, would be different. Having recently suffered through a jury trial in which non-resident counsel who took the lead had obviously not bothered to inform himself about pertinent local requirements and practices, I feel much more strongly that a non-resident lawyer who participates in a proceeding should have to associate with local counsel and should be required to become familiar with local procedural rules and requirements. I see that as my obligation in a case presently pending in another jurisdiction in which I have been admitted pro hac vice and have retained local co-counsel.
- q) I am discouraged that the examples provided in here are geared primarily from a corporate counsel point of view rather than a complex litigation plaintiff's point of view. If any recommendations are made to allow in house counsel to

a corporation to practice, similar allowances should be made for plaintiff lawyers who specialize in nationwide complex litigation.

r) New Mexico law should recognize that a lawyer in good standing from another state may conduct discovery in New Mexico (examine documents, take depositions, etc.) for a lawsuit or action pending in the lawyer's home jurisdiction. A lawyer in good standing from another state should be allowed to take statements and conduct discovery in New Mexico regarding anticipated, but unfilled, litigation regardless of where it is anticipated the litigation will be filed.

s) There should be a distinction between representing an existing client, out of state, on discreet matters, where forcing a client to hire and bring new counsel up to speed works a financial hardship on the client, and permitting any licensed lawyer to establish a practice anywhere.

t) This survey fails to adequately consider the non-litigation aspects of the practice. Not everything is a court, arbitration or mediation proceeding.

u) Hypothetical 10 is unclear as to where the lawyer expects the litigation to be filed. It should be noted that there is a fair possibility that his actions would be deemed "non-legal" and non-privileged as mere investigation anyway.

v) There is a fine line between practicing in another state and not.

w) I think that unless an attorney is licensed in the state (whatever state) they should not be allowed to solicit clients or conduct legal business including giving legal advice in that state. There is enough variation between the laws from state to state that they need to be licensed.

x) We must differentiate between reviewing and generally advising and actual representation where there is legal action resulting from the contact. Whenever there is legal action resulting an attorney licensed within the state should be involved.

y) The greatest danger from non-admitted lawyers prejudicing clients' interests is in litigation. Business transactions do not pose a great risk of damage to clients and in fact, may be better handled efficiently and cheaply by the clients "regular counsel."

z) As a lawyer in Texas, New Mexico and Colorado who maintains an office in El Paso (limiting my practice to criminal trials and appeals) I have been seldom required to associate a New Mexico resident counsel. Since I passed the New Mexico exam and have qualified as a recognized specialist by the NM Bar I would strongly oppose any attempt to force local counsel on my clients, many of whom are NM residents and cannot afford dual representation.

aa) Although I understand the desire to protect in-state lawyers and in-state standards of practice, I favor a "rule of reason" approach for discovery and non-litigation/business activities, and I feel that pro hac vice admissions should be allowed on a case-by-case basis, as long as the privilege is not abused by a particular practitioner.

bb) As in the case of "MDP" the court will either recognize we are in a trans-border/multi-discipline service delivery system and adjust lawyer rules accordingly OR ignore the world economy and lose the opportunity to regulate important services performed by lawyers and others.

cc) In this era of rapidly expanding interstate commerce and other dealings, counsel should be permitted to work in any state where their services can be effectively delivered or are otherwise needed by an existing or prospective client. Perhaps the time has finally come to begin doing away with at least some protectionist aspects of the bar admissions process. One issue which should be re-examined is whether strict limitations on multi jurisdictional practice are premised primarily on protection of legal services consumers or protection of local attorneys' cash flow.

dd) Activities conducted in another state should include the use of a local counsel; activities conducted in New Mexico by an out-of-state counsel should include the use of a local counsel.

ee) Business lawyers have to serve their clients. Since our business clients do more and more interstate business, the profession has to change in order to keep up. If we cannot practice interstate, we will become irrelevant and will become too expensive. Professions that can't change with the time don't control their own destiny. Look at what happened to the doctors in the last ten years.

ff) Am employed by a government agency. 12B should require either association with local counsel or NM Bar membership (licensure by NM Supreme Court.

gg) Many corporations do business in the southwest region (i.e. Texas, New Mexico, Arizona, Colorado, Utah, and Nevada) and require general business advice. Many areas of law including environmental, corporate, and contracts do not require a New Mexico lawyer usually.

hh) Interstate practice seems inevitable, given the mobility of current life. It may have some negative consequences, such as out-of-state lawyers poaching good cases, but I think it will be beneficial overall. I've taken 3 states' bar exams, and find the whole process unnecessarily burdensome and repetitive.

ii) In commercial practice, legal advice is seldom restricted to one jurisdiction. A lawyer should not be at risk because she gives advice that crosses, e.g. Texas.

**ALSO SEE Comments ee), qq), vv), ggg), & hhh) in  
Part III. Attorney Licensing and Regulation**