

**IN THE SUPREME COURT OF
FLORIDA**

**REPORT OF THE FLORIDA BAR RE:
RULES REGARDING THE
MULTIJURISDICTIONAL PRACTICE
OF LAW**

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INTRODUCTION

On May 12, 2005, this Court adopted rules regarding the multijurisdictional practice of law (hereinafter "MJP"). *In re: Amendments to the Rules Regulating The Florida Bar and the Florida Rules of Judicial Administration*, 907 So. 2d 1138 (Fla. 2005). In adopting the rules, this Court directed The Florida Bar "to monitor the implementation of these amendments and any challenges that arise and report back to the Court within two years from the effective date of these amendments with recommendations for improvements or changes, if any." *Id. at 1143*. In a subsequent letter, this Court directed that the report be filed by June 1, 2007. What follows is The Florida Bar's report and recommendation for rule amendments.

The proposed amendments were reviewed and approved by the Disciplinary Procedures Committee, the Rules Committee, and the Board of Governors of The Florida Bar in accordance with rule 1-12.1, R. Regulating Fla. Bar, and Standing Board Policies. The proposed amendments and a notice requesting comments were published in the April 30, 2007, issue of *The Florida Bar News*. That notice contained an error as to a rule number. A correction regarding the error was published in the May 15, 2007, issue of *The Florida Bar News*. The notice on the bar's website contained the correct

rule number. Both notices are attached hereto as Appendix "A." As of the date of filing this report, no comments were received by The Florida Bar. The full text of the proposed amendments in legislative and 2-column format are attached hereto as Appendix "B."

PROPOSED AMENDMENTS TO RULE 4-5.5

Rule 4-5.5 of the Rules Regulating The Florida Bar, commonly referred to as the MJP rule, sets forth the circumstances in which an out-of-state lawyer may provide legal services in Florida. Generally speaking, the implementation of the rule has gone smoothly. However, a few areas have been identified where the rule could be clarified to avoid confusion. The proposed amendments to these areas are discussed below.

Proposed Amendments to Subdivisions 4-5.5(b) and Comment

Subdivision 4-5.5(b) sets forth conduct of an out-of-state attorney which is prohibited as the unlicensed practice of law. Subdivisions 4-5.5(c) and 4-5.5(d) then list the exceptions to subdivision 4-5.5(b) and allow an out-of-state attorney to practice law in Florida on a limited and temporary basis. The exceptions were crafted to recognize that the Florida Rules of Judicial Administration and rules of certain administrative agencies and tribunals allow an out-of-state attorney to appear before a court, administrative agency or tribunal as long as certain requirements are met.

While the MJP rule allows practice when authorized by a court, administrative agency or other tribunal, at present the rule does not specifically state that an out-of-state attorney cannot appear unless the attorney is authorized to do so by the court, administrative agency or tribunal. As this is not specifically mentioned in the rule, some out-of-state attorneys have argued that they can appear without the authorization as long as they fall within another part of rule 4-5.5. This interpretation of the rule is incorrect. It is not the intent of the MJP rule to supplant the rules of the court, administrative agency or tribunal as noted by the mention of those rules in various places in the MJP rule and the comment. Therefore, if a rule of a court, administrative agency, or tribunal requires an out-of-state attorney to obtain prior permission to appear, the out-of-state attorney may not appear unless that rule has been followed. To clarify this requirement, subdivision 4-5.5(b)(3) and accompanying comment language have been added to the MJP rule. The title of the subdivision is also changed to better reflect the language of the subdivision.

Proposed Amendments to Subdivisions 4-5.5(c)(2) and 4-5.5(d)(2)
and Comment

Subdivisions 4-5.5(c)(2) and (d)(2) provide that an lawyer licensed in another state (subdivision c) or in a foreign country (subdivision d) may provide limited and temporary legal services in Florida that "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." (Emphasis supplied.) The language in italics is problematic and causes confusion with the intent of the rule as recommended by the Special Commission on the Multijurisdictional Practice of Law 2002 (hereinafter "Commission II"). The proposed amendment recommends that this language be deleted.

In recommending the MJP changes to the Board of Governors of The Florida Bar, Commission II reviewed the report and recommendations of the American Bar Association (hereinafter "ABA"). While Commission II recommended adoption of most of the rule and comment language suggested by the ABA, some language was changed or deleted. In debating the comment to the subdivisions quoted above, Commission II declined to adopt one paragraph of the ABA's comment, finding that it was too broad. The language Commission II did not include in the comment stated that "[w]hen 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 this 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." *Report of the American Bar Association Commission on Multijurisdictional Practice, Report 201B, page 2, May, 2002.* Commission II "declined to adopt [this] paragraph [as it] would have extended the authorization [to practice law] to an associated lawyer who does not expect to appear *pro hac vice* or to subordinate lawyers. Commission II felt that this language was too broad." *Report of Special Commission on the Multijurisdictional Practice of Law 2002, May 25, 2003, page 11.*

Although it was Commission II's intent that a lawyer could not provide services in Florida under subdivisions (c)(2) or (d)(2) unless the lawyer was authorized to do so or had a reasonable expectation to be authorized, the language of the subdivisions seems to allow a lawyer to practice without the authorization or reasonable expectation. As worded, the subdivisions seem to state that a lawyer assisting a lawyer who is authorized or reasonably expects to be authorized does not have to meet any requirements other than the good standing and temporary requirements of the first paragraphs of subdivisions (c) and (d). Therefore, an out-of-state lawyer assisting someone who is authorized or expects to be authorized under the rule could almost practice law on an unlimited basis. This was not

the intent of Commission II. Deleting "or a person the lawyer is assisting" removes any confusion and makes it clear that an out-of-state lawyer must either be authorized to appear or have a reasonable expectation to be so authorized in order to provide services under subdivisions 4-5.5(c)(2) and 4-5.5(d)(2).

New comment language is also being proposed to further clarify these subdivisions. Subdivisions 4-5.5(c)(2) and 4-5.5(d)(2) allow an out-of-state lawyer to provide services in a pending case in Florida if the lawyer is authorized to do so. The subdivisions also allow activities if the out-of-state lawyer has a reasonable expectation to be authorized to appear. Some out-of-state lawyers have argued that they can appear in court, before an administrative agency or before a tribunal even if they have not followed the applicable rules as long as they have a reasonable expectation that they will be allowed to appear if the rules were followed. The comment to the rule does not support this argument.

The comment to rule 4-5.5 states that

Lawyers not admitted to practice generally in Florida 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 formal rules of the agency. Under subdivision (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 Florida

requires a lawyer who is not admitted to practice in Florida to obtain admission pro hac vice prior to appearing before a tribunal or to obtain admission pursuant to applicable rule(s) prior to appearing before an administrative agency, this rule requires the lawyer to obtain that authority.

In other words, if a court or other rule requires that an out-of-state attorney have permission to appear, the out-of-state attorney cannot appear unless that permission has been granted. While the existing comment language is intended to prohibit the out-of-state lawyer's appearance in court if the court has not granted permission to appear, the intent would be clarified by adding "in court or" to the comment. Introductory language to the sentence is also being added. The amended comment would read ". . . to the extent that a court rule or other law of Florida requires a lawyer who is not admitted to practice in Florida to obtain admission pro hac vice prior to appearing in court or before a tribunal or to obtain admission pursuant to applicable rule(s) prior to appearing before an administrative agency, this rule requires the lawyer to obtain that authority."

Proposed Amendment to Comment to Subdivisions
4-5.5(c)(1) and 4-5.5(d)(1)

A similar problem to the one noted above occurs with subdivisions 4-5.5(c)(1) and 4-5.5(d)(1). Those subdivisions allow a lawyer to provide services in Florida on a temporary basis if the services "are undertaken in association with a lawyer who is admitted to practice in Florida and who

actively participates in the matter." Out-of-state lawyers have argued that because they have associated a Florida lawyer, they can then appear before a court, administrative agency or tribunal without following the applicable rules. As with the other subdivisions of the rule, this is not the intent as the rules of the court, administrative agency or tribunal requiring permission to appear would control. However, there is no comment language regarding this requirement. Therefore, an amendment adding the same language found in the comment to subdivisions 4-5.5(c)(2) and 4-5.5(d)(2) is being proposed.

Proposed Amendment to Comment to Subdivisions
4-5.5(c)(3) and 4-5.5(d)(3)

Subdivisions 4-5.5(c)(3) and 4-5.5(d)(3) allow a lawyer to represent an individual in an arbitration proceeding in Florida. With the exception of international arbitrations, the lawyer may only appear in 3 arbitrations in a 365 day period. In order to track the number of appearances, rule 1-3.11 requires the lawyer to file a verified statement with Florida. Language is being added to the comment to reference this requirement. The comment language also clarifies that if an out-of-state attorney is admitted *pro hac vice* in a case and the court orders that the case be sent to arbitration, the out-of-state attorney does not need to file a verified statement if the court retained jurisdiction over the matter.

Housekeeping Amendments

A few housekeeping amendments to rule 4-5.5 are also being proposed. The comment refers to rule 4-7.11. Effective January 1, 2007, rule 4-7.11 ceased to exist. Therefore, the comment is being changed to rule 4-7.10, the correct rule number. A colon is added to the end of 4-5.5(d)(3). "Or otherwise" is deleted from the comment to subdivisions 4-5.5(c)(3) and 4-5.5(d)(3) as is "(or elsewhere in these rules)."

PROPOSED AMENDMENTS TO FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.510

In adopting the MJR rules, this Court also adopted amendments to Florida Rule of Judicial Administration 2.510 (formerly numbered 2.061). Rule 2.510 requires an out-of-state attorney wishing to appear in Florida to file a Motion to Appear *Pro Hac Vice*. The rule also requires that the out-of-state attorney send a copy of their Motion to The Florida Bar, and mandates the use of a form motion which is part of the rule. The form Motion to Appear *Pro Hac Vice* is the only form which is part of the Florida Rules of Judicial Administration. Generally, rules requiring a specific form give this Court discretion to promulgate the form. Including the form as part of the rule is somewhat problematic. Therefore, the proposed amendment deletes the form from the rule and provides that the form will be one promulgated by this Court.

In addition to deleting the form, language is added to the rule which will require the movant to list in the motion the bar number or attorney number for all states in which the movant is currently eligible to practice law. This number along with an alpha code will be used for tracking purposes so that The Florida Bar may determine whether multiple motions are filed by the same individual.

For the benefit of the Court, attached hereto as Appendix "C" is a proposed form motion. The proposed motion differs from the form in the rule in the following respects:

The word "Circuit" is deleted from the style of the case as a motion could be filed in County Court as well.

Paragraph 1 deletes the requirement that the movant supply their home address and telephone number and their social security number. Supplying this information raises privacy concerns and is not necessary for compliance with the rule. The movant must still supply their city and state of residence as a Florida resident cannot appear *pro hac vice*.

Paragraph 4 requires that the movant list their bar or attorney numbers. This information will be used for tracking purposes.

Paragraph 11 deletes "and has never been" as a retired member of The Florida Bar may move to appear *pro hac vice* if the other requirements of the rule are met.

Paragraph 15 adds the requirement that the movant supply the date prior motions were granted or denied.

The rule requires local counsel. Local counsel must be a member of The Florida Bar eligible to practice law in Florida.

Local counsel does not have to reside in Florida. The address line of paragraph 16 has "Florida" as the state. This is changed to a blank for the state. The blank for listing the county of residence is deleted as unnecessary.

Blanks for an address and telephone number are added to the signature line for both the movant and the Florida attorney.

The Florida Bar's zip code in the Certificate of Service is changed from 32399-2300 to 32399-2333.

The notary acknowledgement is deleted as unnecessary and movant/affiant is changed to movant.

This proposed form motion is being provided for the Court's benefit only and is not part of the amendments being recommended by The Florida Bar. It is requested that any form promulgated by this Court be provided to The Florida Bar so that it may be placed on the bar's website.

PROPOSED AMENDMENTS TO RULE 1-3.11

As noted above, except in international arbitrations, an out-of-state attorney wishing to appear in an arbitration proceeding in Florida must file a verified statement with The Florida Bar. This requirement and the contents of the verified statement are set forth in rule 1-3.11 of the Rules Regulating The Florida Bar. The rule presently requires that the verified statement contain the out-of-state attorney's social security number. Requesting this information raises privacy concerns. The amendment deletes the requirement of supplying a social security number and replaces it with a

requirement that the out-of-state attorney supply their bar or attorney number for all jurisdictions where the attorney is currently eligible to practice law. This number along with an alpha code will be used for tracking purposes so that The Florida Bar may determine whether multiple motions are filed by the same individual.

CONCLUSION

It is encouraging that the MJP rules have worked so well. It is anticipated that clearing up the few problems noted above will result in an improved administration of the rule and eliminate any confusion.

WHEREFORE, The Florida Bar respectfully requests that this Court adopt the amendments to the MJP rules attached hereto as Appendix "B."

Respectfully submitted,

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