Responsive Law
The Consumer's Voice in the Legal System

Comments on: Multijurisdictional Practice

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Comments to the

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Consumers for a Responsive Legal System ("Responsive Law") thanks the Working Group for the opportunity to present its comments on its Issue Paper Concerning Multijurisdictional Practice. Responsive Law is a national, nonprofit organization working to make the civil legal system more affordable, accessible and accountable to the people.

Multijurisdictional practice will largely benefit consumers by allowing greater competition in the provision of legal services and more lawyers and law firms to realize scale economies.

Current domestic models are protectionist and restrict consumer choice by allowing them to retain lawyers only within their jurisdiction. Even the states with more progressive policies in this area allow only temporary practice through loosened *pro hac vice* requirements. For instance, Colorado's Rule 220 allows out-of-state lawyers to practice in Colorado as long as they do not establish an office in Colorado and do not solicit clients in the state. While it is commendable to have less restrictive *pro hac vice* requirements such as this, consumers should have access to lawyers nationwide on more than a temporary basis. It is shocking that two centuries after the Articles of Confederation were abandoned, 150 years after the Civil War, and two decades into the Internet Age, the bar still places barriers on interstate commerce in the provision of legal services. In our view:

- The only restrictions that should be placed on a consumer's access to lawyers from another state are those that protect them against misconduct.

Although it is important that out-of-state attorneys be accountable to some regulatory body, it is not a requirement that the agency be based in the state they are practicing in.

It also is important that out-of-state lawyers carry sufficient malpractice coverage, and that their clients are protected against defalcation.

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■ It is less important to consumers that out-of-state lawyers have taken an exam demonstrating knowledge of the law of a state in which they are practicing.[1]

The practice of law rarely calls upon knowledge memorized for the bar exam – good lawyering entails far more. Consumers may take exam passage into account when selecting a lawyer, but would be far better advised to look at a lawyer's relevant experience. In any event, states should leave consideration of such factors to the discretion of the consumer rather than completely barring access to out-of-state lawyers.

LESSONS FROM THE CANADIAN MODEL

Canada's National Mobility Agreement (NMA) holds lawyers accountable to their clients while allowing consumers great flexibility in the choice of a lawyer. Its provisions for temporary mobility require lawyers to have a clean disciplinary record. It also requires a lawyer's home jurisdiction to exercise disciplinary authority over the lawyer when practicing out of state.

The NMA further protects clients by requiring liability and defalcation coverage for temporary mobility. Given that mandatory malpractice insurance for American attorneys is, unfortunately, only a reality in Oregon, requiring malpractice coverage nationwide may be beyond the scope of an American analogue to the NMA. However, we would support a provision that allowed states to require out-of-state lawyers to be covered for malpractice to the same extent as home-state lawyers. Similarly, we would support a provision that only granted temporary mobility to those lawyers from states with client compensation funds equal to those of the host state, on a *per capita* basis.

The low bar that Canada has set for permanent mobility is beneficial to consumers. As stated above, once a lawyer has proven his or her competence by passing a state's bar exam, and character and fitness inquiries, there is little that consumers can gain by having the lawyer pass another state's bar exam. The simple requirements for

[1] Louisiana, with its civil law system, may be an exception to this principle. We expect that lawyers with greater familiarity with Louisiana practice will be able to advise the Working Group on how that state could fit into any broader scheme of multijurisdictional practice.

permanent mobility make it possible for lawyers to provide their services across the country, while remaining subject to the disciplinary authorities in each jurisdiction in which they regularly practice. This allows consumers to have access to a nationwide market of lawyers who will be accountable to them.

Based on the Issue Paper, the Canadian NMA seems to offer the most consumer protection of the foreign multijurisdictional practice arrangements. However, the European and Australian models also seem to provide the expanded consumer choice of the Canadian model and also appear not to have triggered any significant consumer criticism since their enactment.

The Working Group has asked whether the Commission should "develop a white paper that explores in detail whether the development of interstate compacts similar to those in Canada or forms of mutual recognition as in Europe and Australia would be feasible alternatives or supplements to Model Rule 5.5." Implementation of any of these foreign systems would be a great benefit to American consumers. We hope that the Commission will pursue such a study to determine which of these models would be best for Americans in the market for legal services.