November 30, 2001

Chief Justice A. William Maupin
Nevada Supreme Court
201 South Carson Street
Carson City, Nevada 89701-4702

RE: Report of the Supreme Court of Nevada Commission on Multijurisdictional Practice

Dear Chief Justice Maupin:

Enclosed is the report of this Court’s Commission on Multijurisdictional Practice, which I hereby submit to the Court pursuant to this Court’s Order of July 16, 2001, constituting the Commission and issuing its charge.

The report is the result of the Commission’s organizational and planning meeting in Las Vegas on August 29, 2001, public hearings held in Elko, Nevada on September 19, 2001, in Las Vegas, Nevada on September 28, 2001 and in Reno, Nevada on October 3, 2001, and the Commission’s discussion and deliberation meetings in Las Vegas on October 24, 2001 and November 15, 2001.

We hope that this report responds adequately to and fulfills the expectations of the Court’s Order of July 16, 2001.
November 30, 2001
Page 2

While we anticipate that the Court will review and consider our recommendations and may well conduct further hearings, we respectfully urge the Court to separately and expeditiously consider the suggested modifications of Supreme Court Rule 199 (Firm names), which is directly relevant to the recommendations contained in this report and about which there appears to be no contrary view. Furthermore, we have been advised that the Board of Governors of the State Bar concurs in the recommended changes to that Rule.

Respectfully submitted,

[Signature]

Thomas R. C. Wilson
Chairman

TRCW/cf
Enclosure
cc: (with enclosure)
Justice Cliff Young
Justice Miriam Shearing
Justice Deborah A. Agosti
Justice Robert E. Rose
Justice Myron E. Leavitt
Justice Nancy A. Becker

cc: Members of the Commission (without enclosure)
The Honorable Jack B. Ames
The Honorable James W. Hardesty
The Honorable Ronald D. Parraguirre
Matthew C. Addison
Nancy L. Alf
John A. Curtas
Neil G. Galatz
M. Ann Morgan
Dean Richard J. Morgan
John H. Mowbray
Bridget Robb Peck
Margo Piscevich
John P. Schlegelmilch
Gloria J. Sturman
William C. Turner
Allen W. Kimbrough, Reporter
REPORT
OF THE
SUPREME COURT OF NEVADA
COMMISSION ON
MULTIJURISDICTIONAL PRACTICE

November 2001
REPORT OF THE
SUPREME COURT OF NEVADA
COMMISSION ON MULTIJURISDICTIONAL PRACTICE

Table of Contents

I. Introduction 3
II. History and Composition of the Commission 3
III. Approach and Methodology 6
IV. Executive Summary 7
V. Issues and Recommended Solutions 8
   A. Unauthorized Practice of Law 8
   B. Out-of-State Lawyers in Litigation 8
   C. Out-of-State Lawyers in Transactional Matters 10
   D. Corporate or Governmental Counsel 11
   E. Legal Services Attorneys 13
   F. Assistant District Attorneys in Rural Counties 14
   G. Multi-State Law Firms 14
   H. Client Protection 16
   I. Admissions Procedures 17

VI. Implementing Rules 17

Attachment A (Proposed Revised and New Supreme Court Rules)

SCR 189 Unauthorized practice of law
SCR 42 Pro hac vice admission
SCR ___ Non-Nevada attorneys in extra-judicial matters
SCR ___ In-house or governmental counsel
SCR 49.3 Limited practice for certain attorneys
SCR 199 Firm names and letterhead
SCR ___ Multi-state law firms

Attachment B (Transcript of September 19 Hearing in Elko)

Attachment C (Transcript of September 28 Hearing in Las Vegas)

Attachment D (Transcript of October 3 Hearing in Reno)
I. Introduction

The multijurisdictional practice of law ("MJP") occurs when a lawyer admitted to practice in one jurisdiction provides, or seeks to provide, legal services in a jurisdiction where that lawyer is not admitted. Such practices run contrary to the traditional view that each jurisdiction is responsible for the admission, regulation and discipline of its own attorneys and that the provision of legal services by an attorney not licensed in that jurisdiction constitutes the unauthorized practice of law (and thus subject to sanctions).

This traditional view is being challenged on several fronts as technology and communication expand and as certain courts have defined activities that once would not have been thought of as unauthorized practice to be so. Among these forces are the following:

- Corporate counsel desiring to move freely from state to state in order to represent only their employer;
- Attorneys desiring to conduct discovery in a foreign jurisdiction;
- Attorneys with specialized expertise desiring to perform occasional work in a foreign jurisdiction; and
- Multi-state law firms desiring to practice law unfettered by state borders.

II. History and Composition of the Commission

In response to the growing awareness of the issue of MJP generated by the formation of the American Bar Association's Commission on Multijurisdictional Practice ("ABA Commission") in August, 2000, and the activities of the ABA Commission, the State Bar of Nevada under the leadership of then President-Elect John H. Mowbray formed its own Commission to study the MJP issue. The State Bar Commission was composed of officers of the State Bar, members of the Board of Governors, local bar presidents, and the dean of the state's only law
Following a series of meetings and the preliminary analysis of a number of MJP-related issues, it was determined that the matter was of such great import to the practice of law in the State of Nevada that it would be appropriate to ask the Supreme Court to form a superseding commission to address these issues. By order of the Supreme Court dated July 16, 2001, the Supreme Court Commission on Multijurisdictional Practice ("the Commission") was created. All members of the State Bar Commission were carried over to the new entity with the addition of a Supreme Court justice and three members of the Nevada judiciary. Thomas R. C. (Spike) Wilson II of Reno was appointed as Chair of the Commission, and the final composition of the Supreme Court Commission which formulated this Report was as follows:

Thomas R. C. Wilson II, Chair  
McDonald Carano Wilson McCune  
Bergin Frankovich & Hicks LLP  
Reno

The Hon. Nancy A. Becker  
Supreme Court of Nevada  
Las Vegas

The Hon. Jack B. Ames  
Fourth Judicial District Court  
Elko

The Hon. James W. Hardesty  
Second Judicial District Court  
Reno

The Hon. Ronald D. Parraguirre  
Eighth Judicial District Court  
Las Vegas

Matthew C. Addison  [President, Washoe County Bar Association]  
McDonald Carano Wilson McCune  
Bergin Frankovich & Hicks  
Reno
Nancy L. Allf
Alff & Paustian
Las Vegas

John A. Curtas
Kummer Kaempfer
Bonner & Renshaw
Las Vegas

Neil G. Galatz
Las Vegas

M. Ann Morgan
Jones Vargas
Reno

Dean Richard Morgan
UNLV William S. Boyd School of Law
Las Vegas

John H. Mowbray
Morse & Mowbray
Las Vegas

Bridget Robb Peck
Beesley, Peck, Matteoni & Cossitt
Reno

Margo Piscevich
Piscevich & Fenner
Reno

John P. Schlegelmilch
Yerington

Gloria J. Sturman
Edwards Hale Sturman
Atkin & Cushing, Ltd.
Las Vegas
The Supreme Court Commission held its organizational meeting on August 29, 2001. Building on the work done by the prior State Bar Commission, the Commission then and after reviewed a myriad of materials on the subject of MJP, including reports from other jurisdictions on the subject and transcripts of public hearings held by the ABA Commission. It was determined that, in order to fully assess the issues related to MJP and to aid in formulating this Report, a series of public hearings should be held in an effort to gather written comments and oral testimony from any and all persons interested in the subject matter of the Commission's work. Those hearings were held as follows:

- September 19, Elko
- September 28, Las Vegas
- October 3, Reno

More than 30 persons appeared in person to testify before the Commission and many others provided written comments. The public hearings were transcribed and copies of those transcripts are included as Attachments B through D to this Report.

The Commission thereafter met on two occasions (October 24 and November 15) to debate and concur (where possible) on the recommendations contained in this Report and the proposed Supreme Court Rules required to implement them. Multiple drafts of the Report were circulated for comment before final approval by the Commission and submission to the Supreme Court of Nevada.
IV. Executive Summary

The Commission was unanimous in its view that certain changes should be made to the current scheme in Nevada for the regulation of attorneys licensed in other jurisdictions. Such changes would provide protection for Nevada's citizens and business entities while expanding and clarifying the practice of law in this state by out-of-state practitioners. The Commission reached the following broad conclusions as explained more fully herein:

- In general, admission to practice in Nevada should continue to be predicated on the taking and passing of the Nevada bar examination;

- Nevada lawyers should bear primary responsibility for legal services performed within the state;

- Pro hac vice admission should be continued and expanded to include practice before governmental agencies and in court-annexed or statutorily-required mediations and arbitrations;

- A system of registration should be developed for out-of-state lawyers involved in non-litigation matters;

- Admission for limited purposes should be available to corporate or governmental counsel;

- SCR 49.3 (legal services attorneys) should be expanded to provide for licensure of unlimited duration while in the employ of a non-profit legal services provider;

- Current SCR 199 (firm names) should be replaced by ABA Model Rule 7.5 (with certain modifications); and

- A system of registration should be developed for multi-state law firms desiring to do business in Nevada.
V. Issues and Recommended Solutions

A. UNAUTHORIZED PRACTICE OF LAW

The Commission spent considerable time debating the issue of the unauthorized practice of law in general and specifically whether the Commission wished to develop a definition of what constitutes the practice of law (as several other jurisdictions have attempted to do). Considerable discussion was had regarding the formulation of "safe harbors" for activities that have generally not been viewed as the unauthorized practice of law in this state, including the taking of depositions in Nevada for cases pending in other jurisdictions.

In the final analysis the Commission chose to recommend the adoption of a modified version of ABA Model Rule 5.5 that would, among other things,

1. Reaffirm that a lawyer shall not practice law in Nevada in violation of Nevada's regulation of the legal profession;

2. Expressly permit investigation and discovery in Nevada incident to a case in the attorney's home state;

3. Continue the practice of admission pro hac vice; and

4. Create "safe harbors" for occasional work performed in non-litigation matters on behalf of a client incident to work in the home state, for occasional association with Nevada counsel, or for those serving as an arbitrator, mediator, or impartial third party in alternative dispute resolution matters.

B. OUT-OF-STATE LAWYERS IN LITIGATION

One of the most common instances of multijurisdictional practice occurs in the litigation arena, when out-of-state counsel desire to appear in the state courts in Nevada. This practice is currently permitted under SCR 42 which sets out the terms and conditions under which out-of-state litigators may be admitted pro hac vice. Under the current rule, a non-
Nevada practitioner is permitted to apply through his local counsel for pro hac vice status in a particular matter by filing an application with the State Bar and the payment of a $350 annual fee per case.

Under the current rule, more than five pro hac vice appearances within three years is considered excessive. The Commission felt that the current procedures do not put the trial judge (who is the “gatekeeper” in this instance) on adequate notice of the past admissions practices of the out-of-state counsel and that the limitation on the number of admissions should be more restrictive.

Additionally, the Commission considered whether the pro hac vice mechanism should also apply to mediations and arbitrations. Considerable debate was had on this topic with a majority of the Commission reaching a consensus that SCR 42 should be applied only to court-annexed or statutorily-required mediations and arbitrations, based on a recognition of the contractual nature of private mediations and arbitrations, as well as the balancing of potential harm to a Nevada resident versus the right of that citizen to have an attorney or representative of their choice.

A sizable minority of the Commission concluded that the pro hac vice requirements should apply to all mediations and arbitrations, as the same client protection concerns (i.e., the potential harm of a non-Nevada attorney giving legal advice to a Nevada resident) would apply and that the pressure to reach a final result in a private arbitration or mediation makes such mechanisms as important as court-annexed or statutorily-required ones.

Having heard considerable testimony regarding non-Nevada attorneys practicing before a myriad of governmental agencies or bodies, the Commission agreed that the pro hac vice requirements of SCR 42 would apply unless the agency’s or body’s own rules provide otherwise.

The Commission also debated the role of local counsel in the pro hac vice context, and the recommendations below in that regard were not the unanimous view of the Commission.
The Commission therefore reached a consensus on the following proposed solutions:

(1) The current SCR 42 procedure should be continued and expanded to include court-annexed or statutorily-required arbitrations and mediations and to appearances before administrative agencies or governmental bodies (unless the entity's own rules provide otherwise).

(2) SCR 42 should be revised to state that there can be no more than five (5) pro hac vice admissions within a three-year period except upon good cause shown. The State Bar will revise its forms to show clearly on the face of the documents forwarded to the court or agency the number of prior admissions and the dates thereof in order for the court or agency to make the requisite determination.

(3) The sponsoring or affiliated Nevada counsel shall be responsible to the Court or governmental entity for the administration of the case and for compliance with all state and local rules of practice. It is the responsibility of local counsel to ensure that the case is handled in accordance with all applicable Nevada rules.

C. OUT-OF-STATE PRIVATE LAWYERS IN TRANSACTIONAL MATTERS

The Commission heard extensive testimony regarding the involvement of non-Nevada attorneys in various transactional engagements, particularly securities offerings for private or governmental entities, estate planning, and asset protection matters. Obviously, for such transactions, pro hac vice admission is not available, as they are extra-judicial in nature. The Commission also recognized that there may exist a lack of local expertise in certain of these areas that would necessitate the involvement of out-of-state practitioners for the client's needs to be best served. However, the Commission recognized that a distinction must be made between an occasional assignment for a Nevada client and the regular and ongoing representation of Nevada clients by attorneys not licensed in this jurisdiction. Accordingly, the Commission determined to
recommend a procedure that would best accommodate the needs of Nevada clients, while precluding the unauthorized practice of law in Nevada.

The Commission, therefore, recommends that rules be adopted to accomplish the following:

(1) Any lawyer not subject to the “safe harbor” provisions of the Nevada version of Model Rule 5.5 (see above) or otherwise covered by other provisions of the Supreme Court Rules shall register with the State Bar prior to or contemporaneously with the commencement of work for a Nevada client and shall pay an appropriate fee to the State Bar for such registration.

(2) Such registering attorney shall associate with a licensed Nevada attorney either in private practice or in the employ of a corporate or governmental entity for which the registering attorney is performing services.

(3) The registering attorney shall become subject to the disciplinary rules of the State Bar of Nevada and shall agree that any discipline meted out in Nevada shall be reciprocal in any jurisdiction where the lawyer is licensed.

D. CORPORATE OR GOVERNMENTAL COUNSEL

The Commission recognized that one of the driving forces behind the MJP movement has been the relationship of corporate or in-house counsel to a jurisdiction in which they reside and work but in which they are not licensed to practice. A similar, but distinct, situation arises in the case of attorneys employed by a governmental entity who are not at the time licensed to practice in that jurisdiction.

Considerable written and oral testimony from corporate counsel was considered by the Commission. From a client protection standpoint, the Commission agreed that the typical corporate client was in a position to protect itself from its own employed attorneys or was capable of sustaining the risk of poor performance by such counsel. The Commission
reached the conclusion that the ability of corporate counsel to represent his or her employer in Nevada should be simplified, subject to certain restrictions and regulations and that such procedures would be applicable to governmental attorneys as well.

The Commission's recommendations are as follows:

(1) An attorney employed by a corporation or other entity situated in or doing business in Nevada or an attorney employed by a Nevada governmental entity shall be eligible for admission in Nevada for limited purposes.

(2) Such attorney shall be duly admitted to practice and be in good standing in another state and shall provide to the State Bar evidence of such good standing on an annual basis.

(3) Such attorney shall register with the State Bar and shall pay an annual fee identical to that paid by licensed Nevada attorneys of comparable longevity.

(4) Such attorney shall be subject to discipline by the State Bar and shall fulfill the same continuing legal education requirements as prescribed for licensed Nevada attorneys.

(5) Such attorney shall not be permitted to appear in the courts of the state (unless otherwise allowed by applicable law) but shall be permitted to communicate with third parties on the employer's behalf.

(6) Such attorney shall not render legal services for nor give legal advice to any persons other than the employer.

(7) Eligibility for this admission for limited purposes shall terminate when such attorney leaves the employ of the corporation or governmental entity.
E. LEGAL SERVICES ATTORNEYS

Through the course of its work, the Commission became aware of the critical shortage of Nevada attorneys in the employ of legal services organizations and the impediments presented under the current rules when such agencies attempt to hire attorneys (usually from other jurisdictions) with particular expertise.

Under current SCR 49.3 non-Nevada licensed attorneys in the full-time employ of legal services organizations are permitted up to two years to take and pass the Nevada bar examination, similar to the rights given to assistant district attorneys in rural counties under SCR 49.4. In comparison, professors at Nevada's only law school are admitted during the full course of their employment by the school through SCR 49.1. Both scenarios, of course, assume that the attorney in question is licensed and in good standing in another jurisdiction.

The Commission determined that the public interest would be best served if SCR 49.3 (and other related rules) were revised to reflect the following:

1. Any attorney licensed and in good standing in another jurisdiction would be eligible for admission to the State Bar of Nevada for so long as that person was in the employ of a non-profit legal services organization.

2. Such attorney would be required to submit to the character and fitness process required of all new admittees to the State Bar.

3. Such attorney would pay annual bar dues and would be subject to the continuing legal education requirements imposed by the Supreme Court.

4. Such attorney would at all times work under the supervision of an attorney licensed and in good standing in Nevada.
F. ASSISTANT DISTRICT ATTORNEYS IN RURAL COUNTIES

The Commission discussed the provisions of SCR 49.4, which gives certain assistant district attorneys (licensed in another jurisdiction) admission for up to two years prior to taking and passing the Nevada bar examination. It was agreed that an increase in that term of years was perhaps warranted, but the Commission recommends that the Supreme Court poll the rural District Attorneys to ascertain whether or not such extension is needed and, hence, whether any change is warranted.

Accordingly, the Commission makes no further recommendation to the Court on this subject.

G. MULTI-STATE LAW FIRMS

Over the past 20 years or more, many law firms have grown both in size and in territorial reach. The Commission heard considerable testimony regarding the desire of some of these firms to practice law in Nevada and to bring with them their established firm name and concomitant goodwill, arguing that their clients' needs would be better met in such an environment, while conceding that they wished to comply fully with Nevada's rules.

Under current SCR 199 a law firm is permitted to practice only in the name of licensed Nevada attorneys or that of a deceased or retired Nevada attorneys. Enforcement of this rule is currently the subject of litigation in the Federal courts.

The larger concern of the Commission was not with those firms who wish to open a full-time Nevada office and to practice under an established firm name, but rather was with the current practice of the nominal presence of out-of-state attorneys through "storefront" offices in which an out-of-state attorney attempts to practice in Nevada through a post office box (or similar means) or through the employment of a "figurehead" Nevada attorney who neither controls the work being performed nor is accountable for its accuracy. It was recognized by the Commission that this scenario occurs primarily in the litigation context.
The problems associated with this nominal presence approach include the inability of the courts to coordinate the flow of a litigation matter or to schedule hearings on an expeditious basis, as well as the inability of Nevada counsel to serve pleadings upon or communicate effectively with such out-of-state counsel.

The Commission's overriding concern (as with every issue related to MJP) was the protection of Nevada's citizens from unlicensed practitioners and to make all attorneys who perform work in this state clearly subject to bar discipline and contributions to the client security fund. The Commission balanced that need with the desire to find a mechanism for attorneys licensed in Nevada to practice effectively in a multi-state law firm environment.

The Commission was unanimous that current SCR 199 should be replaced by the essence of ABA Model Rule 7.5. The Commission differed from the ABA drafters in the Commission's desire NOT to permit the use of artificial trade names except in the case of non-profit legal services providers (e.g., Clark County Legal Services) or to designate "the law offices of" or such nomenclature.

On the broader issue of the regulation of out-of-state law firms in Nevada (and the client protection concerns discussed above), the Commission worked from the primary view that Nevada lawyers must be ultimately responsible for and accountable to the client and courts for all work performed on behalf of a Nevada client or performed within the state.

With that overriding goal in mind, the majority of the Commission recommends that the following procedures be implemented in Nevada:

1. All law firms based in another state shall register as a firm with the State Bar of Nevada and shall pay an annual fee for such registration.

2. Such firm shall annually provide to the State Bar the names and addresses of all attorneys employed by the firm and shall certify that such attorneys are in good standing in the state of
their licensure (which shall be identified).

(3) Such firm shall maintain a permanent office in the State of Nevada in which shall reside a principal or shareholder of the firm, who shall be the designated agent for service of process in the state.

(4) Such firm shall be required to disclose in writing to its clients in Nevada that not all members of the firm are licensed to practice in this state and what services will be performed by out-of-state lawyers.

(5) Such firm shall maintain trust accounts in accordance with SCR 78.5 with all funds resulting from any matter in Nevada being maintained solely in those accounts.

(6) Such firm shall comply fully with SCR 199.

H. CLIENT PROTECTION ISSUES

Again noting that an overarching goal of the Commission was to guarantee the protection of Nevada’s citizens from malfeasance by out-of-state counsel (just as the current rules attempt to govern Nevada attorneys), the Commission recognized the need to ensure that non-Nevada attorneys would contribute to the Client Security Fund and that other steps would be taken to prevent deception and fraud from being worked on the public.

To that end the Commission recommends the following:

(1) A portion of the registration fees generated from the registration of transactional attorneys, in-house or governmental counsel, and law firms shall be designated for the Client Security Fund currently administered by the State Bar.

(2) All advertisements placed in Nevada media (except simple telephone listings) or broadcast to this state shall provide a
statement (when applicable) that the advertising attorney or law firm is not licensed by or registered with the State Bar of Nevada.

I. ADMISSIONS PROCEDURES

One of the foci of the nationwide debate over MJP has been whether all barriers for admission from one state to another should be removed and perhaps replaced with a national "driver's license"-type scheme or with compacts between the various states.

The Commission considered testimony on this issue and engaged in vigorous debate regarding its ramifications for the profession in general and the practice of law in Nevada in particular, keeping in mind the needs of the public to be protected from those not qualified to represent them.

After due deliberation the Commission agreed unanimously that the current practice of admission to the State Bar of Nevada only by the taking and passing of the bar examination (with its accompanying character and fitness requirements) should be continued, subject only to the exceptions permitted for legal services attorneys and law professors and the admission for limited purposes provided under these recommendations for in-house or governmental counsel.

VI. Implementing Rules

Obviously, the implementation of the Commission's recommendations will require the revision of certain existing Supreme Court Rules and the creation of additional Rules. The Commission submits to the Court its proposed versions of those revised and proposed Rules as Attachment A hereto.
Respectfully submitted,

SUPREME COURT COMMISSION ON MULTIJURISDICTIONAL PRACTICE

Thomas R. C. Wilson II, Chair
The Hon. Nancy A. Becker
The Hon. Jack B. Ames
The Hon. James W. Hardesty
The Hon. Ronald D. Parraguirre
Matthew C. Addison
Nancy L. Allf
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John P. Schlegelmilch
Gloria J. Sturman
William C. Turner
Allen W. Kimbrough, Reporter
ATTACHMENT A

PROPOSED REVISED AND NEW SUPREME COURT RULES
SCR 189. Unauthorized practice of law.

A lawyer shall not:

(a) A lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

(b) A lawyer admitted to practice in another jurisdiction, but not in this jurisdiction, does not engage in the unauthorized practice of law in this jurisdiction when:

1. the lawyer is authorized to appear before a tribunal in this jurisdiction by law or order of the tribunal or is preparing for a proceeding in which the lawyer reasonably expects to be so authorized;

2. the lawyer participates in this jurisdiction in investigation and discovery incident to litigation in which he is representing a party in a state in which he is licensed; or

3. other than making appearances before a tribunal with authority to admit the lawyer to practice pro hac vice:

   (i) a lawyer who is an employee of a client acts on the client's behalf or, in connection with the client's matters, on behalf of the client's other employees or its commonly owned organizational affiliates incident to work being performed in a state in which he is licensed to practice and which is carried out on an occasional basis and not as a regular course of business in this jurisdiction;

   (ii) the lawyer acts with respect to a matter incident to work being performed in a state in which he is licensed to practice and which is carried out on an occasional basis and not as a regular course of business in this jurisdiction;

   (iii) the lawyer is associated in a particular matter with a lawyer admitted to practice in this jurisdiction and is performing the work on an occasional basis and not a regular or repetitive course of practice in this jurisdiction; or
(iv) the lawyer is acting as an arbitrator, mediator, or impartial third party in an alternative dispute resolution proceeding.

(c) (2) A lawyer shall not assist another person in the unauthorized practice of law.
SCR 42. Practice of attorneys not admitted in Nevada or admitted but not maintaining Nevada offices.

1. Application of Rule. This rule applies to all actions or proceedings pending before a court in this state; all actions or proceedings pending before an administrative agency or governmental body, unless said agency or governmental body provides otherwise; all arbitration, mediation or alternative dispute resolution procedures which are court-annexed or court ordered, or which are mandated by statute or administrative rule; and all services incident to any of these proceedings including but not limited to discovery and settlement negotiations ("Defined Proceedings"). This rule does not apply to arbitration, mediation or alternative dispute resolution procedures in which the parties engage voluntarily.

2. Who may apply. A person who is not a member of the State Bar of Nevada but who is a member in good standing and eligible to practice before the bar of any United States court or of the highest court in any state, territory or insular possession of the United States, and who has been retained to represent a client in this state in a Defined Proceeding, or arbitral proceeding in a court of this state, or in connection with any discovery proceeding in this state, may in the discretion of such court, arbitrator, mediator or administrative or governmental hearing officer, be permitted upon written application as provided in subsection 23, to appear as counsel in that cause, provided that an competent, active member of the State Bar of Nevada is associated as counsel of record. No such person is eligible to appear as counsel pursuant to this rule if such person (a) is a resident of the State of Nevada, or (b) is regularly employed in the State of Nevada, or (c) is regularly engaged in substantial business, professional, or other activities in the State of Nevada.

23. Procedure for applying. Appearance in a Defined Proceeding cause, or in any discovery or other proceeding related thereto, is subject to the approval of the court, arbitrator, mediator or administrative or governmental hearing officer where such cause is pending. An applicant desiring to appear as counsel under this rule shall comply with the procedures established below:

(a) Appearance in court Defined Proceedings.

(i) Verified application to state bar. In order to appear as counsel in a Defined Proceeding before a court in this state, an applicant shall file with the State Bar of Nevada at its Las Vegas, Nevada, office an original and one (1) copy of a verified application together with a certificate from the state bar or from the clerk of the supreme court or highest admitting court of each state, territory or insular possession of the United States in which the applicant has been admitted to practice law certifying the applicant's membership therein and a non-refundable application fee of $350.00.
(ii) **State bar statement.**

(iii) **Motion to associate.** The motion to associate shall be filed with the court arbitrator, mediator or administrative or governmental hearing officer, where the cause **Defined Proceeding** is pending by the Nevada counsel associated with the applicant, together with proof of service by mail on all parties in accordance with Nevada Rules of Civil Procedure, of a copy of the motion. The motion to associate shall include as exhibits: (a) the original verified application; (b) the original certificate(s) of good standing; and (c) the state bar statement. Further, the motion to associate shall be accompanied by a proposed order granting or denying the motion to associate. A copy of each order granting or denying the motion as entered by the court, arbitrator, mediator or administrative or governmental -hearing officer where the cause **Defined Proceeding** is pending shall be mailed by the Nevada counsel of record associated with the applicant to the State Bar of Nevada at its Las Vegas, Nevada office.

(iv) **Entry of Order.** An applicant shall make no appearance in a cause **Defined Proceeding** until the court, arbitrator, mediator or administrative or governmental agency where the **Defined Proceeding** cause is pending enters the order granting the motion to associate.

(v) **Limited exception to original and annual fee.** The court, arbitrator, mediator or administrative or governmental agency has the discretion to waive the $350.00 original fee pursuant to subsection 23(a)(i) and the annual renewal fee pursuant to section 8-9 upon a showing that out-of-state counsel is providing pro bono services in a death penalty habeas corpus case or in other similar circumstances providing for pro bono representation. An application for waiver of SCR 42 fees may be obtained from the State Bar of Nevada and should be filed with the original verified application seeking admission under this rule.

34. **Verified application.** The verified application required by this rule shall be on a form approved by the State Bar of Nevada and available at the county clerk's office of the court, arbitrator, mediator, or administrative or governmental agency where such cause **Defined Proceeding** is pending and shall state: (a) the applicant's residence and office address; (b) the court or courts to which the applicant has been admitted to practice and the date of such admission; (c) that the applicant is a member in good standing of such court or courts; (d) that the applicant is not currently subject to any disciplinary proceedings by any organization with authority to discipline attorneys at law; (f) whether the applicant has ever received public discipline including, but not limited to, suspension or disbarment, by any organization with authority to discipline attorneys at law; (f) the title of court and cause (including but not limited to arbitrations, mediations or matters before an administrative agency or governmental body) in which the applicant or any member of the firm of
attorneys with which the applicant is associated has filed an application to appear as counsel under this rule in this state in the preceding three years, the date of each application, and whether it was granted; (h) the name, address and telephone number of the active member of the State Bar of Nevada who is attorney of record; (i) the name of each party and the name and address of counsel of record who appeared for that party; (j) that the applicant certifies that he or she shall be subject to the jurisdiction of the courts and disciplinary boards of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of Nevada; (k) that the applicant understands and shall comply with the standards of professional conduct required by members of the State Bar of Nevada; and (l) that the applicant certifies that he or she shall be subject to the disciplinary jurisdiction of the State Bar of Nevada.

45. *********
56. Discretion. The granting or denial of a motion to associate counsel pursuant to this rule by the court is discretionary. The court, arbitrator, mediator, or administrative or governmental hearing officer may revoke the authority of the person permitted to appear as counsel pursuant to this rule ("out-of-state counsel") to make continued appearances pursuant to this rule. Absent special circumstances, repeated appearances by any person or firm of attorneys pursuant to this rule shall be cause for denial of the motion to associate such person.

(a) Limitations. It shall be presumed, absent special circumstances, and only upon a showing of good cause, that more than five appearances by any person or firm of attorneys granted under this rule in a three-year period is excessive use of this rule.

(b) Burden on applicant. The burden to establish special circumstances and good cause for an appearance in excess of the limitations set forth in subsection 5(a) of this rule shall be upon the applicant, shall be fully set forth by affidavit, and shall accompany the original verified application.

67. *********
78. *********
89. *********

910. Failure to renew. Any out-of-state counsel who continues to act as counsel in the cause Defined Proceeding and fails to pay the renewal fees set forth in subsection 8-9 of this rule shall be suspended from appearance in any cause Defined Proceeding upon expiration of a period of 30 days after the anniversary date. The Executive Director of the State Bar of Nevada shall notify the out-of-state counsel and the Nevada counsel of record of the suspension and shall file a certified copy of the notice with the court, arbitrator, mediator, or administrative agency or governmental body where the cause Defined
Proceeding is filed, with the county clerk of each county, and with the clerk of the supreme Court of Nevada.

1011. Reinstatement. The out-of-state counsel may be reinstated upon the payment of the fees set forth in subsection 8 of this rule and a $50 late penalty. Upon payment of all accrued fees and late penalty, the Executive Director may reinstate the out-of-state counsel, and shall thereupon certify such reinstatement to the court, arbitrator, mediator, or administrative agency or governmental body where the cause is filed, with the county clerk of each county, and with the clerk of the supreme Court of Nevada.

1112. ********

1213. Discipline. Out-of-state counsel shall be subject to the jurisdiction of the courts and disciplinary boards of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of Nevada. He or she shall familiarize himself or herself and comply with the standards of professional conduct required by members of the State Bar of Nevada and shall be subject to the disciplinary jurisdiction of the State Bar of Nevada. The rules of this court shall govern in any investigation or proceeding conducted by the State Bar of Nevada under this rule. The active member of the State Bar of Nevada who is attorney of record shall be present at all motions, pre-trials, or any matters in open court unless otherwise ordered by the court, and shall be responsible to the court, arbitrator, mediator, or administrative agency or governmental body for the administration of the Defined Proceeding and for compliance with all state and local rules of practice. It is the responsibility of Nevada counsel to ensure that the Defined Proceeding is tried and managed in accordance with all applicable Nevada procedural and ethical rules. A resident of this state who is admitted to practice in another jurisdiction but who is not admitted to practice in Nevada may not practice under this rule.

1314. Nevada attorneys not maintaining Nevada offices. An attorney admitted to practice in Nevada but who does not maintain an office in Nevada shall, on filing any pleadings in the courts of Nevada, either associate an attorney maintaining an office in Nevada, or designate an attorney maintaining an office in the county in Nevada wherein the pleading or paper is filed, upon whom all papers, process or pleadings required to be served upon an attorney may be so served including service by hand delivery or facsimile transmission. A post office box or mail drop location shall not constitute an office under this rule. The name and office address of such attorney so designated shall be endorsed upon the pleading or paper so filed, and service upon such attorney shall be deemed to be service upon the attorney filing the pleading or other paper.
SCR ___. Practice of private attorneys not admitted to Nevada in extra-judicial matters.

1. **Who may apply.** A attorney who is not a member of the State Bar of Nevada but who is a member in good standing and eligible to practice before the bar of any United States court or of the highest court in any state, territory or insular possession of the United States, and who is not subject to the safe harbor provisions of SCR 189, may perform legal services for a Nevada client on an occasional basis upon successful compliance with this rule.

2. **Application of rule.** This rule applies to legal work performed by an attorney for a client residing in Nevada. This rule does not apply to work performed in connection with any action pending before a court of this state, any action pending before an administrative agency or governmental body, or any arbitration, mediation, alternative dispute resolution proceeding, whether authorized by the court, law, rule or private agreement.

3. **Association of licensed Nevada attorney.** An attorney registering under this rule shall associate with a licensed Nevada attorney either in private practice or in the employ of the corporate or governmental entity for which the registering attorney is performing services.

4. **Procedure for registering.** Notwithstanding any other provision of law, an attorney admitted to the bar of any other state, territory or insular possession of the United States, may perform legal services for a Nevada client provided that the attorney, if not admitted to Nevada, timely registers with the State Bar of Nevada, either prior to or contemporaneously with the commencement of work for a Nevada client, a certificate described in subsection (a) below and pays a non-refundable application fee of $350.00.

   a. **Verified certificate to State Bar.** In order to register under this rule, an applicant shall file with the State Bar of Nevada at its Las Vegas, Nevada, office an original and one (1) copy of a verified certificate, which shall state all of the following:

   (1) The attorney’s residence and office address.

   (2) The courts before which the attorney has been admitted to practice and the dates of admission.
(3) That the attorney is currently a member in good standing of, and eligible to practice law before, the bar of those courts.

(4) That the attorney is not currently on suspension or disbarred from the practice of law before the bar of any court.

(5) That the attorney is not a resident of the State of Nevada.

(6) That the attorney is not regularly employed in the State of Nevada.

(7) That the attorney is not regularly engaged in substantial business, professional, or other activities in the State of Nevada.

(8) That the attorney agrees to be subject to the jurisdiction of the courts of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of Nevada.

(9) That the attorney agrees that any discipline imposed in Nevada shall be reciprocally imposed in the jurisdiction where the attorney is licensed.

(10) The name, address, and telephone number of the active member of the State Bar of Nevada who is the associated attorney.

b. **Limitations.** Failure to timely file the certificate described in subsection (a) or, absent special circumstances, more than five (5) appearances by any attorney or firm pursuant to this rule in a three-year period is excessive and shall be grounds for disqualification under this rule.

c. **Certificate containing false information.** An attorney who files a certificate containing false information or who otherwise fails to comply with the standards of professional conduct required of members of the State Bar of Nevada shall be subject to the disciplinary jurisdiction of the State Bar with respect to any of his or her acts occurring in the course of the work performed.

5. **Discipline.** Out-of-state attorneys shall be subject to the jurisdiction of the courts and disciplinary boards of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of Nevada. He or she shall familiarize himself or herself and comply with the standards of professional conduct required by
members of the State Bar of Nevada and shall be subject to the
disciplinary jurisdiction of the State Bar of Nevada. The rules of this court
shall govern in any investigation or proceeding conducted by the State
Bar of Nevada under this rule. Any discipline imposed in Nevada shall be
reciprocally imposed in the jurisdiction where the attorney is licensed.

6. Renewal of certification. On or before the anniversary date of the
filing of the verified certificate with the State Bar of Nevada, the associated
Nevada attorney must certify to the State Bar of Nevada, whether: (a) the
out-of-state attorney continues to perform legal services in the same
matter, or (b) the matter has been concluded. Any out-of-state attorney
registered under this rule who continues to perform legal services in the
matter shall remit to the State Bar of Nevada an annual $350.00 fee within
thirty (30) days of the anniversary date.

7. Failure to renew. Any out-of-state attorney who continues to
perform legal services in the matter and fails to pay the renewal fees set
forth in subsection 6 of this rule shall be suspended from practicing law
upon expiration of a period of 30 days after the anniversary date. The
Executive Director of the State Bar of Nevada shall notify the out-of-state
counsel and the Nevada counsel of record of the suspension.

8. Reinstatement. The out-of-state attorney may be reinstated upon
the payment of the fees set forth in subsection 6 of this rule and a $50 late
penalty. Upon payment of all accrued fees and late penalty, the
Executive Director may reinstate the out-of-state counsel and shall notify
the out-of-state counsel and the Nevada counsel of record of the
reinstatement.
SCR 49. __. Limited practice of attorneys employed in government or as in-house counsel.

1. Who may apply. Notwithstanding the provisions of Rules 49 through 49.8, an attorney who is not a member of the State Bar of Nevada but who is a member in good standing and eligible to practice in any other jurisdiction, and who is employed exclusively and full-time in Nevada for a governmental entity or as in-house counsel for a corporation, including its subsidiaries and affiliates, association, partnership or other business entity situated in or doing business in Nevada, whose lawful business consists of activities other than the practice of law or the provision of legal services, may be admitted to limited practice in this state subject to the conditions of this rule.

2. Procedure for registering. Application for admission to practice under this rule, along with the appropriate fee, shall be filed with the Clerk of the Supreme Court, with a copy served upon the State Bar of Nevada, at its Las Vegas, Nevada, office, and shall be accompanied by the following:

   a. Verified application. In order to register under this rule, an applicant shall file an original and one (1) copy of a verified certificate, on a form supplied or approved by the State Bar of Nevada, which shall state all of the following:

      (1) The attorney’s residence and office address.
      (2) The name, address, and telephone number of the attorney’s employer.
      (3) The courts before which the attorney has been admitted to practice and the dates of admission.
      (4) That the attorney is currently a member in good standing of, and eligible to practice law before, the bar of those courts.
      (5) That the attorney is not currently on suspension or disbarred from the practice of law before the bar of any court.
      (6) That the attorney agrees to be subject to the jurisdiction of the courts of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of Nevada.
a. If the State Bar recommends approval of the application, the Supreme Court may grant the application and permit the attorney to practice in Nevada, subject to the restrictions of this rule.

b. If the State Bar recommends denial of the application, the applicant may, within twenty (20) days of service, file objections to the

b. A certificate from the state bar or clerk of the supreme court or highest admitting court of each state, territory or insular possession of the United States in which the applicant has been admitted to practice law certifying the applicant’s membership and good standing therein.

c. An affidavit signed by the attorney’s immediate governmental supervisor or an officer, director or general of the attorney’s employer attesting to the fact that the attorney is a bone fide full-time employee and the nature of the employment conforms to the requirements of this rule and agreeing to promptly notify the State Bar whenever the attorney ceases to be so employed.

d. Affidavits signed by two members of the bar where the attorney has been admitted or other evidence satisfactory to the State Bar establishing the attorney’s good moral character and fitness to practice law.

e. A non-refundable application fee of $150.00.

f. An annual fee equivalent to the annual membership dues paid by licensed Nevada attorneys of comparable longevity.

g. Such other information or documentation as the State Bar may request in the course of its investigation.

3. Certificate containing false information. An attorney who files a certificate containing false information or who otherwise fails to comply with the standards of professional conduct required of members of the State Bar of Nevada shall be subject to the disciplinary jurisdiction of the State Bar with respect to any of his or her acts occurring in the course of the work performed.

4. Review by State Bar. The State Bar shall investigate each application and, if necessary, interview the applicant, and shall file its report and findings with the Supreme Court, recommending approval or disapproval of the application, providing the attorney with a copy of its report and findings.

a. If the State Bar recommends approval of the application, the Supreme Court may grant the application and permit the attorney to practice in Nevada, subject to the restrictions of this rule.

b. If the State Bar recommends denial of the application, the applicant may, within twenty (20) days of service, file objections to the
State Bar’s report, including such additional material or information the applicant deems appropriate, serving a copy of the submission on the State Bar. Thereafter, the State Bar shall have twenty (20) days to file a response, whereupon the matter shall be deemed submitted and the Supreme Court shall render a decision.

5. **Termination.** Admission to practice under this rule shall terminate whenever the attorney ceases to be employed by the employer submitting the affidavit pursuant to section 2(c) above. The employer shall promptly notify the State Bar in writing whenever the attorney’s employment ceases.

4. **Activities permitted under this rule.** An attorney admitted under this rule may render legal advice and services to, and communicate and negotiate with third persons on behalf of, the attorney’s employer, other employees, or the employer’s subsidiaries and affiliates.

5. **Limitations of activities.** Unless otherwise permitted by law, an attorney admitted under this rule may not:

   a. Appear as counsel of record for the employer in Nevada in any court, before any administrative or political agency or in any arbitration, mediation, or alternative dispute resolution proceeding which is court-ordered or annexed or authorized by law or administrative rule.

   b. Render legal advice or services to the public or to anyone other than the attorney’s employer, other employees, or the employer’s subsidiaries and affiliates.

   c. Hold himself or herself out to the public as an attorney so authorized or engaged.

All business cards and employer letterhead used by an attorney admitted under this rule in Nevada shall clearly indicate that the attorney is admitted to Nevada as governmental or in-house counsel.

6. **Continuing legal education.** During the time an attorney is admitted under this rule, the attorney shall comply with the same requirements for continuing legal education as may be prescribed for Nevada attorneys.

7. **Discipline.** Attorneys admitted under this rule shall be subject to the jurisdiction of the courts and disciplinary boards of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of Nevada. He or she shall familiarize
himself or herself and comply with the standards of professional conduct required by members of the State Bar of Nevada and shall be subject to the disciplinary jurisdiction of the State Bar of Nevada. The rules of this court shall govern in any investigation or proceeding conducted by the State Bar of Nevada under this rule.

8. Renewal of admission. On or before the anniversary date of the filing of the verified certificate with the State Bar of Nevada, the attorney admitted under this rule must certify to the State Bar of Nevada: (a) that the attorney is still employed by the same employer that submitted the affidavit pursuant to section 2(c) above, (b) that the attorney has complied with the continuing education requirements prescribed for Nevada-licensed attorneys, and (c) that the attorney is still in good standing before the courts before which the attorney has been admitted to practice. An attorney admitted under this rule who continues to perform legal services shall remit to the State Bar of Nevada within thirty (30) days of the anniversary date, a fee equivalent to the annual membership dues paid by licensed Nevada attorneys of comparable longevity.

9. Failure to renew. An attorney admitted under this rule who continues to perform legal services for an employer and fails to provide the proper certification or pay the renewal fees set forth in subsection 8 of this rule shall be suspended from practicing law upon expiration of a period of 30 days after the anniversary date. The Executive Director of the State Bar of Nevada shall notify the Clerk of the Supreme Court, the attorney and the entity employing the attorney of the suspension.

10. Reinstatement. The out-of-state attorney may be reinstated upon compliance with the requirements of subsection 8 of this rule and a $50 late penalty. Upon payment of all accrued fees and late penalty, the Executive Director may reinstate the attorney and shall notify the Clerk of the Supreme Court, the attorney and the entity employing the attorney of the reinstatement.
Rule 49.3. Limited practice for certain attorneys.

1. Notwithstanding the provisions of Rule 49, an attorney who is admitted to practice law in any other jurisdiction, and who becomes employed by or associated with an organized legal services program funded from state, federal or recognized charitable sources and providing legal assistance to indigents in civil matters, may be admitted to practice before all courts of this state subject to the conditions of this rule and to such further conditions as the court may hereafter direct.

2. Application for admission to practice law in this state under the provisions of this rule shall be filed with the clerk, and shall be accompanied by:

   a. Satisfactory evidence that he or she has graduated from a law school approved by the American Bar Association.
   b. (a) A certificate of the highest court of another state certifying that the attorney is a member in good standing of that court indicating that the attorney has been admitted to practice law in another jurisdiction.
   c. A certificate that he or she has taken and passed either the Multistate Professional Responsibility Examination with a scale score of at least 85 or an equivalent course in ethics taken during his or her law school attendance.
   d. (b) A certificate executed statement signed by the executive director of the organized legal services program that the attorney is currently associated with will be acting in connection with such program and under the supervision of a member in good standing of the State Bar of Nevada.
   e. Certification by the supervising attorney that he or she believes that the attorney possesses the requisite character and fitness to practice law in this state.

3. Admission to practice under this rule shall terminate whenever the attorney ceases to be employed by or associated with such program. When an attorney admitted under this rule ceases to be so employed or associated, a statement to that effect shall be filed immediately with the clerk of this court by the executive director of the particular legal services program with which said attorney was associated. In no event shall admission to practice under this rule remain in effect longer than 2 years.
6. Attorneys admitted to practice under this rule are considered active members of the State Bar of Nevada and are subject to the same requirements regarding continuing legal education as are all other active members of the bar.

7. 6 ....
SCR 199. Firm names and letterhead

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 195. The firm name shall contain the names of living, retired, or deceased members of the law firm. No trade names shall be permitted other than those utilized by non-profit legal services organizations; however, the use of such phrases as "the law offices of" or "and associates" shall be permissible.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.*

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

*This rule is not intended to preclude the retention in a firm name of any member of the Nevada Legislature during periods when the Legislature is in session.
SCR __. Registration by out-of-state law firms.

1. **Applicability of rule.** All law firms based in another state or jurisdiction shall register with the State Bar of Nevada prior to practicing law in this state and pay an annual fee of $500.00 for such registration.

2. **Procedure for registering.** Application for registration to practice under this rule, along with the appropriate fee, shall be filed with the State Bar of Nevada, on a form supplied or approved by the State Bar of Nevada, at its Las Vegas, Nevada office, and shall state the following:

   a. The names and addresses of all attorneys employed by the firm and shall certify that such attorneys are licensed and in good standing, identifying the jurisdictions where each attorney is licensed.

   b. The existence of any pending disciplinary action or investigation against an attorney employed by the firm.

   c. The address and telephone number of a permanent office located within the State of Nevada maintained by the firm, along with the name, address, and telephone number of the principal or shareholder of the firm who shall be resident in the Nevada office and who shall be the designated agent for service of process in this state.

   d. Certification that the firm agrees

      (1) To maintain a permanent office with a resident principal or shareholder at all times the firm is practicing in Nevada and to promptly notify the State Bar of any change of status or address;

      (2) That the firm will disclose in writing to its Nevada clients whether or not all of its attorneys are licensed to practice in Nevada and, if not, shall disclose which legal work will be performed by attorneys not admitted to practice in this state. Such firm shall make documentation evidencing such disclosures available to the State Bar upon request.

      (3) That the firm shall maintain trust accounts in accordance with SCR 78.5, with all funds arising from any matter in Nevada maintained solely in those accounts. The firm shall include the financial institution where the trust account has been established.

      (4) That the firm shall comply fully with SCR 199.
3. Application or certificate containing false information. An attorney who causes to be filed an application or certificate containing false information shall be subject to the disciplinary jurisdiction of the State Bar with respect to such action and the firm shall be disqualified from registering to practice in Nevada.

4. Violation of conditions. If the State Bar determines that the firm is in violation of the conditions set forth in 2(d) above, the Executive Director may, upon twenty (20) days' notice, revoke the registration and the right of the firm to practice in Nevada.

5. Renewal of registration. On or before the anniversary date of the filing of the application with the State Bar of Nevada, the firm registered under this rule must renew its registration, providing current information and certification as required under section 2 above. The renewal shall be accompanied by payment of the $500.00 annual fee.

6. Failure to renew. A law firm registered under this rule which continues to practice law in Nevada and fails to provide the proper information and certification or pay the renewal fees set forth in subsection 5 of this rule shall be suspended from practicing law upon expiration of a period of thirty (30) days after the anniversary date. The Executive Director of the State Bar of Nevada shall notify the out-of-state firm and the clerk of the Supreme Court of the suspension.

7. Reinstatement. The out-of-state firm may be reinstated upon the compliance with the requirements of subsection 5 of this rule and a $100.00 late penalty. Upon payment of all accrued fees and late penalty, the Executive Director may reinstate the out-of-state firm and shall notify the firm and the clerk of the Supreme Court of the reinstatement.
ATTACHMENT B

TRANSCRIPT OF PUBLIC HEARING
SEPTEMBER 19, 2001
ELKO
SUPREME COURT OF NEVADA

COMMISSION ON

MULTIJURISDICTIONAL PRACTICE

TRANSCRIPT OF PROCEEDINGS

Proceedings held at Great Basin College, Elko, Nevada, on

September 19, 2001, at 10:00 a.m.

Proceedings taken by LISA M. MANLEY, CCR-271
APPEARANCES

MEMBERS:

1. Mr. Thomas R.C. Wilson, Chairman
2. The Honorable Nancy A. Becker
3. The Honorable Jack B. Ames
4. The Honorable James W. Hardesty
5. The Honorable Ronald D. Parraguirre
6. Mr. John H. Mowbray
7. Ms. M. Ann Morgan
8. Mr. Rob Bare, Bar Counsel
9. Ms. Gloria J. Sturman
10. Ms. Bridget Robb Peck
11. Mr. Matthew W. Addison
12. Mr. Allen Kimbrough, Executive Director

GUEST SPEAKERS:

13. Mr. Richard Barrows, Wilson & Barrows
14. Ms. Win Smith, Elko County Clerk's Office
CHAIRMAN WILSON: Let's call the meeting to order, get down to work. I am Spike Wilson. I'm supposed to chair this hearing. Let's go around and introduce ourselves.

JUDGE AMES: I'm Jack Ames from Elko.

JUDGE HARDESTY: Jim Hardesty from Reno.

MS. MORGAN: Ann Morgan from Reno.

MR. MOWBRAY: John Mowbray, formerly from Carson City, presently in Las Vegas.

MR. BARE: Good morning, Rob Bare from the State Bar.

JUDGE PARRAGUIRRE: Ron Parraguirre from Las Vegas.

MS. STURMAN: Gloria Sturman, Las Vegas.

JUSTICE BECKER: Nancy Becker, Las Vegas.

MS. PECK: Bridget Peck, Reno.

MR. ADDISON: Matt Addison, Reno.

MR. KIMBROUGH: Allen Kimbrough, State Bar, Las Vegas.

CHAIRMAN WILSON: Thank you all for being here. You are required, obviously, to fulfill your obligation of the Supreme Court's order creating this commission to have public hearings to inquire into the subject of multijurisdictional practice by lawyers and to render a report to the Court for its consideration.
We have people who are going to appear, speak this morning.

JUDGE AMES: Mr. Barrows is here and Ms. Smith is here.

CHAIRMAN WILSON: Great. Who would like to go first? This is going to be rather informal, more conversational than anything else, I hope.

MR. RICHARD BARROWS: Mr. Chairman, members of the commission, my name is Richard Barrows. I have practiced, had a civil practice in Elko for about 28 years. I have practiced in Elko since 1973.

This subject today has been an interest of mine for a long time, maybe for reasons other than a lot of members of the bar.

I wish to talk about only one aspect of proposed Rule 5.5, and that is the association of foreign counsel with legal counsel, which I guess is in proposed Rule 5.5(b)(3)(iii).

For years and years and years, being a general practitioner in a rural area, if a specialized matter came along, whether it be a nonlitigation transaction or litigation, being a general practitioner, if the matter warranted it, or if the client -- and/or if the client could afford it, I affirmatively sought out specialized counsel to assist me in the matter.
In some of those instances, the counsel that I associated with was out of state. And I always operated under what may or may not be -- probably is -- the misconception that out-of-state counsel was in full compliance with the law, simply associating with me as licensed Nevada lawyer.

That is until the day that I heard about the Birbrower case, which I hope is an aberration, I actually haven't followed the developments since it.

But I do know that one of the arguments made in the Birbrower case was that the New York counsel, if the New York counsel had associated with local counsel, then the New York counsel would not have been engaging in the unlawful practice of law.

And the Court said in Footnote 3 of Birbrower case that that's irrelevant, even if the counsel at issue had associated with local counsel, the statute and the Court rule doesn't have that exception. It simply says unlicensed, unauthorized practice of law, period.

I believe there ought to be an implied exception for association with local counsel, but whether there is an implied exception or not -- apparently there isn't -- I would support Exception 5.5(b)(3)(iii), which says that the one exception to the unauthorized practice of law is where the lawyer is associated in a particular
matter with a lawyer admitted to practice in this
jurisdiction.

And I read some proposed language from -- I
believe it must be Neil Galatz -- that adds, "and is
performing work on an occasional basis and not as a regular
or repetitive course of practice."

That certainly makes sense to me. I would
urge this commission to urge the Supreme Court to adopt
that exception. And I would hope that there would be some
common sense to it, not make it onerous, like pro hac vice,
where you have got to go through an application and plead
with the State Bar to allow it and pay $350 a year, pay to
file a motion in court, et cetera.

In many of those transactions there is no
Court to file your application in. And I would -- at least
where there is no pending arbitration or mediation, it
seems to me that simply on an informal basis the rule ought
to be that if foreign counsel is associating with local
licensed counsel, then that is not the unauthorized
practice of law.

CHAIRMAN WILSON: Are you talking in a context
where you are not appearing in court in a matter, or are
you talking with about consulting with specialized counsel
who is working with you in Nevada for a Nevada client?

MR. BARROWS: Absolutely.
CHAIRMAN WILSON: On that kind of issue?

MR. BARROWS: Yes. I would submit, unfortunately, in the way the law has been written for many years, there is just a wholesale unauthorized practice of law by foreign counsel, by out-of-state counsel, because it simply -- there are no exceptions in the rule or the statute.

MR. MOWBRAY: Richard, would you propose maybe a registration system? You mentioned that you would not be in favor of going through the same mechanism under Supreme Court Rule 42 with filing the petition with the State Bar, then going through the motion practice.

Have you thought about that, how you would implement it?

MR. BARROWS: I don't know why it would be -- you know, I still believe that the legal profession by and large is honorable. I don't know why there needs to be a registration process, at least where there is no formal arbitration or pending mediation.

I simply would like a system where, as the Nevada licensed counsel, it is up to me to know when there has to be a formal application with the State Bar or anyone. And if there is no pending court proceeding, administrative proceeding, arbitration or mediation, I would think merely associating with me should be enough.

JUDGE HARDESTY: What about a notification, at
least some way to regulate or police? The concern I would have is that, outside of yourself, the Bar would not know in the case of subsequent Supreme Court Rule 42 applications, that this lawyer had been a frequent participant in matters involving yourself.

Should there at least be a notification process that you have associated out-of-state counsel on a matter?

MR. BARROWS: I came prepared to answer that question affirmatively as a fallback position. I would prefer no formal process. But at worst, I guess I should phrase it, a mere notification to the State Bar as opposed to an application and a fee, I think, would be appropriate.

JUDGE HARDESTY: There are circumstances, it seems to me, where some local counsel might not be as honorable and might take advantage of the opportunity to have out-of-state counsel handle your matters on a regular basis.

Is that something we should be concerned with?

MR. BARROWS: I suspect, in reality, that is happening a lot, probably not in the rural areas.

CHAIRMAN WILSON: Judge Ames?

JUDGE AMES: One of the purposes of being licensed, of course, is to protect the public. And so we need that mechanism in place, also, when these attorneys
come in, if they are actively representing a client in Nevada, then, if they do something that the client -- that gives them a cause of action back against the attorney, what do we have to protect the client, the public?

MR. BARROWS: Well, if I understand your question, what I am proposing is whether it be, let's say, a large leaking underground storage tank clean-up process that I certainly am not familiar enough with that type of law, where there is no lawsuit pending, or whether there is a huge real estate transaction, there is no pending proceeding to file in.

If there is malpractice, I would think, first of all, that I should be actively involved in the matter, rather than just -- I think I read a comment in one of these documents -- I should not act as a mere conduit, I should actually be representing my client, making sure that Nevada law and procedure is complied with.

And both me, as Nevada licensed counsel, and the out-of-state counsel should be liable to the client for malpractice, if it happens.

CHAIRMAN WILSON: Rob?

MR. BARE: Thank you, Mr. Chairman. I just want to take an opportunity to kind of put Mr. Barrows' comments in context, if I could. Perhaps you would appreciate a little background on this. This is one of the main issues.
We get a lot of calls at the State Bar on this.

Normally, what happens is we get a call from a Nevada licensed attorney who is physically present at some sort of a prelitigation proceeding, something like a mediation or arbitration or even a deposition. And that Nevada lawyer calls the bar, says, Hey, bar counsel, what am I supposed to do here today? Opposing counsel is not licensed in the state.

Now, what we tell that lawyer is, in prelitigation matters, such as mediation and arbitrations, if it's the practice of law, which it is when opposing counsel shows up representing the opposing party, you have got to have a Nevada lawyer handle that.

There is no mechanism in the rules to allow for that practice of law by the out-of-state lawyer. That's really the legal situation we are in. I mean, just to be clear, what we have here is the practice of law by an out-of-state attorney.

In order to have an authorized practice of law by an out-of-state attorney in our state, we have Supreme Court Rule 42.

If you look at the technicalities of Rule 42, it requires, as a threshold matter, that there be a matter pending in a court of this state before you can even file a pro hac vice petition.
That means if you don't have a matter pending, things like arbitrations, mediations, such, there is no mechanism legally in our state to allow for a blessing, an authorization, of that practice of law by the out-of-state attorney.

And I will tell you, we have looked at what other states do, and there are no states -- we have not found, and I have sent -- in fact, I sent a letter to all the other bar counsel, all the other 49 bar counsel, and I asked them to provide to me any rule they have in their state that allows for an admission of out-of-state attorney on a prelitigation basis, at things like mediation, arbitration.

Nobody has a rule. There is no rule allowing for this. What's happened in practical effect over time, and I know what happens even more and more every day, is just what Mr. Barrows is suggesting. What happens is you have a State licensed attorney present and essentially handling the legal matter.

What does the out-of-state attorney do? Well, what I like to say to people is, if that attorney is limiting him or herself to a consultation, you know, they are basically a consultant for the Nevada lawyer, the Nevada licensed lawyer who's present for the proceeding and handles it.
That's pretty much what we allow at this point. We don't allow solo practice by the out-of-state counsel with things like mediations and arbitrations.

JUSTICE BECKER: I think to some extent that has come to the forefront because I think the Bar is now interpreting unauthorized practice of law in a manner that was never historically considered when those rules were enacted.

I think the few cases we have in this make it clear that unauthorized -- the reason the Rule 42 relates to court proceedings is because it was never considered to be the unauthorized practice of law for someone to represent their client in an arbitration or a mediation proceeding, because you can be represented by anyone at an arbitration or mediation or administrative proceeding federally.

You are not required to have an attorney, and there is no bar in those proceedings from having someone other than an attorney represent you.

And if any person off the street can be your spokesperson, then it can't be the unauthorized practice of law if your spokesperson is an attorney. And that's traditionally what was happening.

The problem is that arbitrations or mediations or administrative hearings were not a norm 30 or 40 years.
So while it may be appropriate for us to now rethink that as an unauthorized practice of law, I think, by the same token, I don't think it's anybody's intent to take what was intended to be informal proceedings and blow them up into a trial proportion by our use of the unauthorized practice of law.

I think our concern is the protection of the public and the people. I don't think that asking a local attorney, saying, you know, I need somebody with a little more expertise and there really isn't anyone in Nevada that I feel comfortable with for copyright infringement or toxic waste massive litigation, so I would like to hire -- I, the attorney, want to hire out-of-state counsel to associate with me to advise me. It is still my client.

That out-of-state attorney is being hired by you, Mr. Barrows, to give you counsel. And the question now becomes, is that a different situation when they are not the ones who sign the retainer agreement with your client? Your client pays you and doesn't pay them. You are responsible for paying them. I still don't think that's the unauthorized practice of law.

JUDGE HARDESTY: Isn't what he's doing is having
the client pay the associated counsel?

MR. BARROWS: I am sure it could occur that way. I am suggesting in my instance, we are co-counsel. There is a separate retainer agreement between out-of-state counsel and the client.

JUSTICE BECKER: In that case I think it would be the unauthorized practice of law, whether you are associated or not, because they are co-counsel. That's the difference between you hiring someone to advise you and them actually having a client in state and practicing in state.

JUDGE HARDESTY: When I was in practice that was really the practice 90 percent of time. You were bringing in co-counsel and co-counsel was associating in the case.

MR. ADDISON: In fact, working on the matter, negotiations and everything else.

MS. STURMAN: As a little historical background for the committee that amended the Rule 42 few years ago, which I chaired, we looked at this very thing, thought about extending -- asking the Court to extend it a little further.

We specifically didn't because we were contacted by a lot of transactional attorneys and government attorneys, and the problem they raised for us and that we just ran into an impasse, decided not to go any

14
further with was, particularly in the state of Nevada, there is a dearth of, for example, bonding counsel for governmental entities.

They contacted us and said, Please don't do what you are thinking about doing. Because we were going to take it beyond. We thought it should apply to transactional, we thought it should apply to anybody that sets foot in the state of Nevada. We actually thought under Birbrower that we needed to do that.

And they said, You are just going to handicap us, you're going to tie our hands, we won't be able to get bonding. Our only bonding counsel are these people from New York, San Francisco and Denver. There is no bonding counsel in the state of Nevada. We are going to have to travel to them because they will be afraid to come here. It will be impossible for us to do this. You are going to raise our costs. It's going to substantially handicap the ability of -- at the time the big problem was the airport, going through a big expansion, they were bringing people in on a regular basis for huge hundreds of millions of dollars in bonding. They said, Please don't do this to us. And it was attorneys from governmental entities that were calling us.

And so it's a little bit different probably from what Mr. Barrows is talking about. Historically, that
is why, when we amended Rule 42, we didn't go the extra step, just the philosophical problem that it presented.

We decided at that point that the immediate problem for us was all these problems with the people coming in on construction defect, that was really where we wanted to address things, where people were dealing hands-on with individuals and affecting individuals' rights.

I think we just decided the big government entities can protect themselves, if they are hiring these big, flashy lawyers out of New York to do their bonding. Maybe we don't want to go there. We are more concerned about our consumers, protecting them. That is why we only went as far as we did.

But this committee might want to explore that a little further, hopefully we'll have some more testimony, particularly in Southern Nevada, on how this would affect that type of practice.

MS. MORGAN: Richard, have you had any discussion with other practitioners in Elko about this subject?

MR. BARROWS: I have not.

MS. MORGAN: Have you heard whether there is any other concern by anybody except you in this area?

MR. BARROWS: I'm sorry, I have not. I guess my general impression is a lot of people want to do it
themselves, and whether or not that is appropriate under
the rules or not, I don't know. But I am not an expert in
very much, I can guarantee you that.

MS. MORGAN: One follow-up question. Is it your
observation in transactions that you find yourself dealing
with out-of-state attorneys, where there is not a local
presence on the other side?

MR. BARROWS: Certainly. Although we don't, in
Northeastern Nevada, other than the mines, which are sort
of their own islands, we don't really have a lot of
transactions that would warrant out-of-state counsel.

But I am currently involved in one fairly
large transaction in which the counsel on the other side is
from out of state. I haven't raised the issue and
certainly, I guess, wouldn't, simply out of courtesy.

But it seems to me that that out-of-state
counsel who is engaging in a huge real estate transaction
without local counsel is engaging in the unauthorized
practice of law.

JUDGE HARDESTY: That's the other side of the
coin. You are a local lawyer and you are dealing with
maybe a co-counsel situation or a lawyer from out of state
and that lawyer is engaging in behavior and conduct which
creates a problem with the transaction, which creates a
problem ethically. How do you deal with that situation?
I confronted that when I was practicing law and it is extremely frustrating. And there is virtually no control other than to call the Bar and ask for some relief, which can really complicate -- especially in transactional matters -- your own client's situation.

If you are involved in a major real estate deal, calling the Bar and asking for relief is not the best approach in blowing a million dollar or $2 million transaction.

MS. PECK: Just a follow-up comment to what Judge Hardesty just said, it is my experience that in those types of circumstances where there is no pro hac vice application on file that a call to the Bar is not effective.

They take the position they don't have jurisdiction and will then refer that matter to the state in which the attorney practices.

But again, that gives your local consumer and your local attorneys no real form of relief because you don't have anybody locally that you can deal with.

JUDGE HARDESTY: I think it's an issue this committee needs to address. You just have no way -- local counsel have no way of dealing with a problem where out-of-state counsel is appearing, as you have described.

CHAIRMAN WILSON: It looks like it comes up two ways: The person with whom you're having a transaction has
out-of-state counsel, perhaps not local counsel, or either of those; or, in your own case, where you are associating, although there is a separate contract with your client and the out-of-state lawyer.

I guess the question is, how do you make it work?

MR. BARROWS: Well, in the -- in the case of the out-of-state counsel who has not associated, that is a problem that needs to be dealt with, and I simply haven't viewed it as my function to deal with it.

I am simply here on, I suppose, the selfish grounds of not wanting to lure an expert out-of-state counsel into Nevada to help me and have Birbrower hit them in the face and them not be able to collect their fee.

And I guess, in closing, I would like to see a very broad definition of practice of law, with the exceptions that are suggested in Proposed Rule 5.5, rather than a very narrow definition of practice of law, so that you don't get to the issue.

And I thank you for coming all the way out to Elko to hear the rural perspective. I thank you for letting me address you.

CHAIRMAN WILSON: That's helpful, thanks.

JUDGE HARDESTY: On the bond matters, I think it might be worthwhile to check into this. My experience is
that where they hire out-of-state bond counsel, all of
these situations are worked out with civil deputies from
those agencies. It's very much like --

MS. STURMAN: It may be that you can consider
that an association, that would be adequate, if we adopt
the safe harbor proposed in 5.5.

JUDGE HARDESTY: Unless they are acting
independently.

JUSTICE BECKER: They do it both ways. And it
isn't just the local government. It is also our State
Treasurer who has bond counsel out of state that they
consult with frequently.

And it goes beyond that. I think that in the
materials we have been presented, we need to remember that
clients have a right to ask someone from out of state to
represent them.

The issue is, if there is a problem with that
out-of-state counsel, how do we regulate that? How do we
get jurisdiction over them?

MS. STURMAN: I would like to invite somebody to
come and tell us -- I don't understand a lot about
internally how they handle it. I think your question is
very valid.

Maybe we could ask, see if somebody would be
willing to testify in Reno or Las Vegas.
JUDGE HARDESTY: For example, anything from S.B.A. loans or I.R.B.'s, all of those things are involving out-of-state bond counsel opinions on these bonds.

JUSTICE BECKER: It goes beyond that. I'm sure that the major corporations use out-of-state counsel as well as local counsel. I would presume that IGT doesn't provide -- consult only with in-house counsel, that you consult with experts that are out of state, if necessary, although with gaming most of the experts are in state.

But, you know, we have major corporations and you have the issue of the corporation counsels.

And I think that again, you know, the unauthorized practice of law, if I say this person is my agent, they are my agent. If I have authorized them to be my agent, that's always been considered not to be the unauthorized practice of law.

The fact that they happen to also be an attorney is irrelevant. I have designated them as my agent for this transaction and lease negotiation.

And that is where we need to come up with up with some additional protections.

But I honestly don't want to change the situation where the client, knowing that this is an out-of-state person, doesn't have the right to say, look, I like this person, this is who's negotiated all of our other
franchise leases, this is who we use to negotiate our
franchise leases.

I have no doubt that McDonald's Corporation,
when it opens a new franchise, doesn't necessarily use
local counsel, although the person who is opening, buying
the franchise, probably has local counsel.

But I would bet that there is corporate counsel
for McDonald's corporate headquarters that is negotiating
those.

CHAIRMAN WILSON: Which would be an in-house
counsel situation, as opposed to a lawyer who is
independent but is being engaged from out of state.

You know, I guess the challenge is how would
you make the system work and preserve a degree of
accountability. It has to work in the practical context of
business and commerce and everything else.

How do you make people accountable in a way
that is workable?

JUDGE HARDESTY: Rob, are you pursuing complaints
in which a lawyer has called up and said, hey, I have this
out-of-state counsel I am dealing with on a transactional
matter and --

MR. BARE: Most of that, Judge, is handled
relatively informally be either me calling or writing a
letter to the out-of-state counsel advising that they are
engaged in the unauthorized practice of law, having them associate with Nevada counsel.

I mean, it's got to the point that it's a form letter that tells them that, okay.

JUDGE HARDESTY: Are they responsive?

MR. BARE: Sometimes they are, sometimes they aren't. Let me just tell you the cases that stick out in my head are ones where there is a lot of out-of-state practice and it's unauthorized, there is no Nevada lawyer involved.

When we initially get involved, I think the majority position that the out-of-state lawyer has is, Well, leave me alone. Who the hell are you? You don't have any jurisdiction over me. I am from some other state. If you have a problem, deal with my bar counsel, deal with my state, deal with my supreme court.

And I say that because I had a case in Las Vegas -- I guess it is now about a year-and-a-half ago -- where an out-of-state lawyer showed up and opened up a real nice law office and started practicing construction defect law and just really started practicing.

His way of doing business was more or less just to try to settle everything. If the matter proceeded on to court, he would just file a Rule 42 petition in every case that proceeded to court. He tried to limit the amount
of cases that went to court. That was how he was going to practice law.

In that case, it was one of the few cases where we had to actually start proceedings, disciplinary proceedings, concerning an out-of-state lawyer. When we did that, the out-of-state lawyer's first response to us was, well, he filed a motion to dismiss for lack of jurisdiction.

Now, Supreme Court Rule 99 does say that as far as disciplinary jurisdiction is concerned that we have jurisdiction over, of course, all Nevada licensed lawyers and any other lawyer that is practicing within the physical borders of the state. We have disciplinary jurisdiction pursuant to Rule 99. So I used that rule, of course, in that case and in other cases to pursue the matter.

So anyway, interestingly enough -- and I'll try to make this short. Justice Becker, I think, heard this argument recently, too, when we were in the front of the Court.

But that lawyer that I am talking about initially just said, hey, send me all the letters you want, I am just going to practice, you don't have any jurisdiction over me, the hell with you.

And then, when he filed his motion to dismiss our proceedings and he started getting serious, he went out
and hired a prominent Nevada lawyer to represent him.

This lawyer sat him down and said, look, if the State of Nevada disciplines you, there is such a thing known as reciprocal discipline where your state may impose the same discipline that has been imposed upon you in Nevada. So you run a risk of losing your license in your home state if that occurs.

When that lawyer received that advice from his learned Nevada counsel, boy, did his tune change then. And we ended up having that lawyer close the law practice; he doesn't have his practice anymore.

So that's my main experience because that is the one case that really proceeded on and got serious.

But I just tell you, in general terms, the out-of-state counsel tend to not respect our letters and our calls until we start to point out the fact that we have jurisdiction. And when we point that out, start talking in terms of reciprocal discipline, then things start to happen.

I will tell you that most cases when we get involved what happens, as a practical matter, is the out-of-state lawyer simply associates with a Nevada lawyer and things are handled from there.

And that's important. I mean, Judge Ames talked about accountability here. That is really the
problem for us at the State Bar. If you have out-of-state lawyers practicing, whether it's prelitigation or not, we have got to have some accountability as to what we are going to do when their client -- by the way, guess where their client files the bar complaint? They don't file it in Oklahoma, Kansas, someplace, they file it in my office, right. So that really is an important aspect.

MR. MOWBRAY: Mr. Barrows' comments bring up another topic. That is, the full faith and credit. In terms of different jurisdictions, this is a big issue.

When we appeared, the Nevada delegation, at the ABA session in Chicago on August 5, we were asked several questions concerning would we give full faith and credit to another state's disciplinary proceeding and do we do the same thing.

MS. STURMAN: Another question they wanted to know was if, for example, under pro hac vice, if a California attorney who goes to an unlicensed -- unaccredited law school in California, but is licensed in California, under our pro hac vice provisions, do we accept the fact that they can work in Nevada pro hac vice, even though they went to an unaccredited school, where they would have to go through a functional equivalency if they wanted to take our bar?

So it's not just discipline, it's admissions.
While they don't want us to give reciprocity, necessarily, they want us, under the pro hac vice provision, to give full faith and credit to the fact somebody is admitted, even though they wouldn't be qualified in Nevada. So it's broader.

CHAIRMAN WILSON: Is that a good thing or a bad thing?

MS. STURMAN: I don't believe we discriminate in pro hac vice.

CHAIRMAN WILSON: Wait a minute. What should the law be? We are going to make recommendations as to what the law or the rule ought to be, and the question is going to be, what should it be and why.

MS. STURMAN: John?

MR. MOWBRAY: Well, I think we have to take a look at the full faith and credit issue. If all the states are willing to give full faith and credit to the other jurisdictions' disciplinary proceedings, that's one thing. But as a practical matter I am not sure that that's the case.

And I say this because of the February hearing of the M.J.D. commission by the ABA in San Diego. Bar counsel from a southeastern jurisdiction proposed a hypothetical to his California counterpart and said -- my recollection was -- let's assume that one of your
California lawyers came to our jurisdiction, committed an offense which was clearly disbarable under the California Code of Professional Responsibility, clearly disbarable under our Code of Professional Responsibility, there were hearings held, appeals held, there was an adjudication by our Court that this lawyer should be disbarred, and we sent that order to California.

Would you, California, give that full faith and credit? The delegate said, "Absolutely not." At which point there was a groan in the room.

And that's the problem. That's part of the problem we have got to take a look at in terms of accountability.

I was just going to say, I have been looking at these issues, trying to come up with categories. I think if we look at -- the main thing ought to be the protection of the public, making sure there is some mechanism in place to respond if there is a grievance filed against a Nevada lawyer, a California lawyer, a Colorado lawyer, regardless of their specialty.

And we also need to look at in the field of a litigation sense and, on the other hand, in a transactional sense, outside the court. The litigation forum is pretty well regulated by Supreme Court Rule 42.

And I think if we approach the problem, look
at if the lawyer is coming to Nevada to represent Nevada
citizens on a continuous systematic basis, that is one
thing; as opposed to isolated, you know, once every five
years or related to some particular specialty. That is one
area.

In terms of a mechanism to keep account of
that, you know, there are mechanisms other than SCR 42
where you go through the motion practice, file the
statement with the State Bar, do that.

Other states have been looking at different
models, some form of registration system. So I think, we
don't need to -- this is not black and white. There is a
lot of gray areas.

CHAIRMAN WILSON: Before we get caught up in
discussion among ourselves, we have another speaker.
Welcome. Why don't you sit at the microphone.

MS. WIN SMITH: My name is Win Smith. I am from
the Elko County Clerk's office. Mr. Mowbray called
yesterday and asked me if I would just speak briefly on
what our local practice is with getting out-of-state
attorneys.

More often than not, we will have one of the
local attorneys call and say, Do you have some form? Which
we do have, we have a form we present to them. It is Rule
42. We give that out to them, then we file it within that
Occasionally, we get an out-of-state attorney calling about a foreign judgment. We will tell them at that time, Don't put your name on any of the filings, because -- unless you are admitted to the Nevada bar.

So what they will do is they will just present us with an out-of-state foreign judgment and it will be prepared on legal paper without their letterhead. So that's really easy in our office.

CHAIRMAN WILSON: So they just mail it to you and you prepare -- take a -- create a Nevada judgment, have it entered by the Court?

MS. SMITH: No, it's a foreign judgment. It can be from -- we get quite a few of them from Utah. For instance, somebody goes over to the University of Utah Medical Center, doesn't pay their bill, they will get a foreign judgment, then they do executions on it.

It just doesn't have a -- it has no local attorney, nor does it have a Utah attorney.

JUDGE HARDESTY: But the effect -- to effect an execution, a law firm must be doing that through and writs and the like?

MS. SMITH: They just send them, then we issue them. It doesn't have any letterhead on them, so --

CHAIRMAN WILSON: What happens after that you
don't hear?

MS. SMITH: No.

MR. ADDISON: Isn't the procedure you do a notice of filing of foreign judgment, you attach an exemplified copy, then they wait the 30 days, go to the sheriff's office after they have the execution issued by your office, and if there is a bank account, it's done without a lawyer, Nevada lawyer being involved, correct?

MS. SMITH: If a Nevada lawyer -- there is one attorney in Reno that does a lot of foreign judgments. He attaches a notice of foreign judgment. He does put his letterhead on it. Otherwise, they will just come in without that.

MR. ADDISON: But the law is, as I understand it, is that a foreign judgment doesn't become an enforceable Nevada judgment until 30 days passes following its filing and service upon the judgment debtor.

MS. PECK: You can't execute on it.

MR. ADDISON: Right. In fact, it can be challenged in that period.

MS. SMITH: That's true. And we just -- we file them, and then within a month, or after a month, they do the execution. They don't do that immediately.

MR. ADDISON: Right. The execution is just on a form you have that need not be accompanied by anything from
a lawyer?

MS. SMITH: Exactly.

MS. STURMAN: I wanted to ask you a question. Absolutely different topic. But just if you are familiar through filings in your local courts, do you have a lot of attorneys coming from out of state, particularly, I guess, neighboring states like Utah, on a regular basis, having the rule -- a little provision, that, you know, the Judge has discretion if it seems to be excessive? Do you have a problem with people who --

MS. SMITH: No. They have to be admitted to the Nevada bar. No. We get -- they are temporary. We pass out this. Normally, what we find is in the past there have not been too many. But as mining came in, we found a lot more of them coming in then.

MS. STURMAN: Because I think our rule is five cases in three years or three cases in five years.

MR. MOWBRAY: It is presumed to be excessive at five cases in three years.

MS. STURMAN: I was wondering if you have a problem with a lot of people who are clearly practicing primarily here, do seven, eight, nine cases in a year.

MS. SMITH: I don't think so. I don't think we have ever picked it up, anyway.

JUSTICE BECKER: But you wouldn't know if they
don't put -- if all they put is pro per, you would just
file it, and you would assume that someone else would raise
it before the Judge.

MS. SMITH: If we see a lot of cases coming in --
I'm sure that this would happen. If we saw cases coming in
with letterhead we didn't know, Elko is small enough that
we would question it.

JUSTICE BECKER: But the mines frequently use
out-of-state counsel.

MS. SMITH: Yes, they do.

JUSTICE BECKER: You also see things like the
national credit card companies doing things, or are those
local attorneys?

MS. SMITH: They go normally through -- there is
several people in Reno who do a lot of that.

MR. MOWBRAY: Thank you very much. Before you
leave, I would like to thank you for coming today, taking
time out of your busy day to do this.

Also leave with you the observation that you
are, in many senses, the gatekeeper for the legal
profession in the state of Nevada, the entry point for a
lot of the citizens. And you provide a very important
function in that capacity.

MS. STURMAN: And, John, is there something --
maybe we should ask, is there more we could do at the State
Bar level to help the clerks in the spread out jurisdictions track these things?

I mean, maybe there is something logistical, more information we could give to them that might help you. You use our form. Is there any more that we could do that makes that process any easier?

MS. SMITH: Perhaps let us know who has been admitted from out of state.

MS. STURMAN: On a more regular basis. Maybe they don't know. They may be doing all the cases in Reno, not necessarily in this county. Maybe the State Bar should give more information to our clerks.

JUSTICE BECKER: I don't think -- you need to understand the clerks don't have the authority to refuse to file.

What they will do, because Elko is small enough, is they would talk to the chief judge, one of the two judges, say, gee, I don't know what to do about this. I guarantee you that is not going to occur in Clark County with the volume.

That is not the statutory duty of the Clerk, and the Supreme Court has, in fact, told them they cannot simply say, You can't file a document.

CHAIRMAN WILSON: There has been some reference to the mining companies. What has been their practice?
MS. SMITH: Well, the only time that we would see a mining company is if there is a big mining civil suit, and then their attorneys come in, and we will end up filing one of these forms.

I am trying to think of some of the -- Barrick, we have Barrick and Newmont who are two of the big ones. Anglo Gold is another big one. They occasionally get going with cases and they are voluminous, they file these. They are very compliant with everything.

MR. KIMBROUGH: The State Bar staff is currently in the process, with regular assistance from Rob, in revamping all of our forms and procedures for SCR 42, and I have just made a note to make sure once those new forms are done that we will get that information out to all the district clerks.

I really don't think I have ever focused on the fact that you had the forms you passed out. So that is helpful information.

MS. SMITH: If you would like to keep this and you can look at our form, the form we have been using. It may not even -- it might be old. I don't know. Once we get one, we keep them.

MR. KIMBROUGH: I will defer to Rob, let Rob take a look at it. Thank you. We appreciate it.

MS. SMITH: Thank you inviting me.
CHAIRMAN WILSON: We appreciate you coming today.

This is kind of an unruly bunch.

Let's adjourn the public hearing and we'll simply convene with the committee meeting right now.

(WHEREUPON, the public comment portion of the meeting was concluded)
ATTACHMENT C

TRANSCRIPT OF PUBLIC HEARING
SEPTEMBER 28, 2001
LAS VEGAS
Chairman Wilson: I think we'll try and call this to order.

I'm Spike Wilson. I have been asked to chair the meetings of the Supreme Court Commission on Multijurisdictional Practice.

We had a hearing in Elko County last week; the Las Vegas hearing is today; and next week we will be meeting and conducting a hearing in Reno, Nevada.

We have a rather tight agenda and we'll take folks in order that they appear on the agenda and try and move it along. It looks like it's going to be a full morning, but at the same time I don't want to limit your comment or limit questions the committee may put for clarification.

I hope this meeting will be a substantive discussion because it's a learning experience for the commission and your testimony is necessary and, believe me, it is valuable.

I'm going to ask each of the commissioners to introduce himself or herself and then we'll get started.

Ms. Peck: Bridget Peck from Reno.

Mr. Addison: Matthew Addison from Reno.

Ms. Piscevich: Margo Piscevich from Reno.

Hon. Hardesty: Jim Hardesty from Reno.

Chairman Wilson: Spike Wilson.
COMMISSION ON MULTIJURISDICTIONAL PRACTICE PUBLIC HEARING  
FRIDAY, SEPTEMBER 28, 2001

1. JUSTICE BECKER: State Justice Nancy Becker.
2. HON. PARRAGUIRRE: Ron Parraguirre, Las Vegas.
3. MR. MOWBRAY: John Mowbray, from Henderson.
4. LAS VEGAS, CARSON CITY AND A LITTLE BIT OF RENO.
5. MS. STURMAN: Gloria Sturman, Las Vegas.
6. MS. ALLF: Nancy Allf, Las Vegas.
7. MR. KIMBROUGH: Allen Kimbrough.
8. MR. TURNER: Bill Turner, Las Vegas.
11. CHAIRMAN WILSON: All right. Welcome everybody.
12. MR. KENNEDY: Thank you, Mr. Chairman, members of the committee. I'm Dennis Kennedy. I am a member of the firm Lionel Sawyer & Collins.
13. In the written materials that I submitted I set out briefly my background and experience in this area and the ideas and suggestions that I have for the committee are due in some degree to my experience on the disciplinary committee in southern Nevada, which I chaired for three years, and on matters in this area that came before the disciplinary committee.
14. I have also since leaving the disciplinary committee represented clients in two unauthorized practice matters that came before the state bar where I thought all of the issues and concerns that I raise in the written materials arose, and I - the point of my appearance and my written submission is this.
15. There are some areas of great importance that the committee should consider in whatever recommendations it makes to the Supreme Court, and I've set those out individually in the written materials.
16. Briefly, they are that any regulation of the multijurisdictional practice of law has to address these issues.
17. The first is competence. As the committee knows, Nevada requires graduation from an ABA accredited law school, and in any regulatory scheme for the multijurisdictional practice of law that matter has to be addressed.
18. As the committee knows, in California lawyers are allowed to practice without an ABA accredited law school. Nevada sets its level somewhat higher than that.
19. That's something that any regulatory scheme for a multijurisdictional scheme in Nevada has to address, the issue being are we going to permit graduates of non-ABA accredited graduates to come here to practice under such a scheme.
20. Nevada has a CLE requirement including both substantive law and ethics. Not all other states has those schemes. Nevada deems it important enough to make continued bar membership dependent upon completion of CLE, and that's something that the committee has to consider, and that is are you going to place those same requirements on foreign lawyers who come to Nevada, and if you are, how are you going to enforce that, how are you going to make sure that those lawyers have completed those requirements.
21. The second item is discipline. That's a significant item. As the committee knows, any foreign lawyer who applies to take the bar in Nevada undergoes a thorough investigation of history and background, and one of the focuses of that information is the history of discipline in other jurisdictions.
22. If you're going to adopt a scheme that allows lawyers to come to Nevada and practice, that scheme would have to provide for some investigation of a lawyer's prior disciplinary history because it's fair to say that a lawyer with a significant disciplinary history who will apply to take the bar in Nevada in all likelihood might not be allowed to take the bar at all.
23. That same standard it seems to me would have to be applied to foreign lawyers who want to come here and practice under some multijurisdictional scheme, and yet how that scheme would implement that requirement and ensure that scrutiny is something I just don't have an answer for; but it's something if the committee is willing to adopt that sort of scheme, the committee would have to consider and would have to answer that question.
24. Much the same is true about character and fitness. In applying to take the bar, lawyers, foreign lawyers, undergo a rather rigorous character and fitness in Nevada, yet in a multijurisdictional setting a lawyer would not have to undergo that character and fitness at all.
25. Again, if there's going to be a scheme to allow multijurisdictional practice, some sort of character and fitness requirement has to be put into place, and I would suggest to you from my own experience that simply saying, well, if the lawyer has passed the character and fitness requirements of another state, then he's going to come into Nevada. That won't work.

MR. ALLF: I just don't have an...
Southern Disciplinary Committee before the formal establishment of the character and fitness committee, which we now have the chairman, was the character and fitness committee, and if someone's application fell out, then it was the chairman's responsibility to conduct an investigation and do an interview and do a hearing, et cetera, et cetera, and in one instance a lawyer who had been licensed in California for some time had his bar application fall out and it was referred to me for a character and fitness evaluation.

This lawyer had a history in California of tax liens, and his history of tax liens was a few days or a few weeks before the sale he would pay off the lien with interest and go on about his business; but for years he had tax liens all which had incurred right before the sale.

I told him I'm very concerned about this, because if you practice in Nevada, you'll have a trust account, you'll have client's monies, your history of tax liens and paying them off right before the sale is some great of concern to us.

And his response was: California was never concerned about it. That was his explanation. He did not take the bar because I was not satisfied with that explanation, and I thought based on that history and no good explanation that he would be a threat to his clients in Nevada.

The fourth concern that the committee would have to address is that of professionalism, and, simply stated, lawyers that practice in Nevada are members of a relatively small legal community and we practice with a high degree of professionalism; and one of the things the committee has to be concerned with is foreign lawyers may not share the concerns for professionalism that Nevada lawyers have, and there isn't any way to require that lawyers behave professionally, but the norms of the legal community have their own force on that, and the lawyers who practice in a small community tend to realize that being a professional and being honorable is one of the keys of success in practicing law.

I don't know how the committee would ensure that foreign lawyers would operate within those same norms that all of us as Nevada lawyers operate within. It's not an answer, I don't think, to say, well, if the lawyer does not operate professionally or in the community's norms, he won't be successful and will have a difficult time and he might get sanctioned by courts, et cetera et cetera, that's all fine.

But those are all post hoc things, and the interest of Nevada in regulating lawyers is not served by waiting until there are problems and then dealing with them, especially in the situation like this where you're adopting a regulatory scheme.

You've got to adapt a scheme, I think, that ensures that these standards and norms are going to be met by anyone who comes here, not simply to ensure that someone who doesn't fly with them might be served after the fact. That doesn't serve the interest of clients, nor does it serve the interest of the legal community, as I said, in this state which depends on the professionalism and the professional behavior of its members.

The other item, advertising, I think is covered in the written materials. Simply, if you're a Nevada lawyer, you're subject to certain rather strict and comprehensive requirements regarding advertising.

However, if you are a foreign lawyer, the foreign lawyer in the state of licensure is not going to be covered by those requirements.

That foreign lawyer, especially if he or she is in a city near the border, can — in another state can essentially do whatever he or she please with respect to Nevada and not be subject to those advertising restrictions.
context the practice of out-of-state lawyers is pretty well regulated. In the commercial context it, unfortunately, is not, but that's an extremely difficult area and I know that's an area that bar counsel has struggled with over the years. It is very, very difficult when lawyers are crossing state lines to do commercial transactions. Technically when they come to Nevada and engage in the practice of law in a commercial transaction, they're engaging in the illegal practice of law. I know the restatement takes a position on it and the ABA takes a position on it. But that doesn't have an easy answer at all.

But it is an area where the same concerns are present. I mean you can have — you call them, you know, the foreign state's worst lawyer, if he comes here to do litigation, he's not going to get his rule 42 application.

CHAIRMAN WILSON: I guess the doubles is in the details, how do you administer the standard of practice on the part of the transactional field when you're not under the jurisdiction of a trial court who admits you under pro hac vice under certain conditions.

MR. KENNEDY: That's correct.

Mr. Chairman, I know based on my experience the bar counsel who I have a lot of respect and admiration for in the work that he does, his efforts have been of his philosophy has been, look, there's no way I can regulate this because I don't know who is coming in and who's not, but the state's bar position, as I understand it, has been if there is a complaint, I will then act on the complaint.

CHAIRMAN WILSON: Do you think that's adequate?

MR. KENNEDY: Uhm, no, I don't think it is.

CHAIRMAN WILSON: The more difficult question is what should we recommend in lieu of the status quo?

MR. KENNEDY: That's right. As I said, you know, I don't have an answer to that.

CHAIRMAN WILSON: Okay.

MR. KENNEDY: It's easy to say —

CHAIRMAN WILSON: I know where you're going.

MR. KENNEDY: I faced it from both sides while being on the disciplinary committee and while representing clients in front of disciplinary committee.

CHAIRMAN WILSON: I don't want to cut you off. I have one further question, whether you have a view with respect to the practice by in-house counsel who represent in effect a single employer client.

Page 15

MR. KENNEDY: Yes, I do. That's a good place for me to conclude my remarks.

I don't think that in-house counsel present the same sort of problem that we're talking about. The ABA in the ABA annotated rules of professional conduct has a section on this, and I agree with it. The ABA says it doesn't present the usual problems because this is an individual who is licensed to practice law somewhere else who is an employee of an entity in the state, and the dangers of that individual putting, say, unsophisticated clients in jeopardy is almost nonexistent because that individual is an employee of an entity. That entity has control over him.

If the entity is unhappy with the work that he's doing or she is doing —

CHAIRMAN WILSON: You would recommend that person not be required to take the bar exam?

MR. KENNEDY: That's my feeling.

CHAIRMAN WILSON: Do you recommend that person nonetheless be required to register for the bar as an in-house counsel subject to the same ethical rules and principles as those in private practice?

MR. KENNEDY: Yes, I do.

Supreme Court rule 99 as interpreted by the Nevada Supreme Court in Waters versus Barr says if you are practicing in Nevada, you are under the bar's jurisdiction because in that case the individuals were United States attorneys who were not admitted. They said we're practicing in federal court, and the bar of the Supreme Court said: Doesn't matter to us. You're practicing law in Nevada. We have jurisdiction over you. The state rule under rule 99 does have jurisdiction over federal counsel.

CHAIRMAN WILSON: Mr. Kennedy, thank you very much.

Kurt Faux.

All right. Well pass. If he's here.

Is Patricia Curtis here?

Well, we're back on schedule.

Daniel McAuliffe, Snell & Wilmer.

MR. MC AULIFFE: Patricia is my partner.

Maybe she thought I was going to fill in for her.

CHAIRMAN WILSON: You've just been nominated solo, alone and all by yourself.

MR. MC AULIFFE: That's happened before.

I thank you commissioners for giving me the opportunity to talk to you this morning. My name is Dan...
MR. MC AULIFFE: When I leave here today I am going to meet with an individual who contacted me earlier in the week which has massive litigation pending.
in the Nevada courts and wants to engage our firm to handle it, and they want us to handle it for this reason. They have been in touch with five Nevada firms. One has a conflict of interest. The other four have told this person we simply can't handle it, we don't have the horses to do that.

CHAIRMAN WILSON: I am not interrupting, but as I said before the devil is in the details. Recognizing the advantages of a client in Nevada of retaining a multistate law firm with the professional resources and standards you described, I guess the question comes down to the more difficult one, which is not appreciating what your firm brings to the table, it is how do we distinguish between the firm of your ethical standards and professional abilities on the one end and the storefront on the other who has a matter or two, which markets legal services and then sports them to another state to actually do the work? You know what I'm comparing.

And my question is —

MR. MC AULIFFE: I don't think you do distinguish between the two. I think they ought to be subjected to the same rules.

CHAIRMAN WILSON: I guess my question is what should the rules be which would govern your practice and govern that practice so to avoid the problems of that example.

MR. MC AULIFFE: That is a difficult question.

CHAIRMAN WILSON: And, unfortunately, it's the question that we have to deal with and it's —

MR. MC AULIFFE: My point really was going to be telling us we can't use our name is not the answer.

That doesn't address the problem one way or another.

JUSTICE BECKER: Just to clarify, too, what we're talking about, our concern is with a law firm from out of state that hires someone who has just passed the bar, doesn't have a lot of practice experience, just to have a Nevada lawyer be a front person for the firm, and that under those circumstances the firm isn't really operating to open a branch office or expand its business but is just hiring a name, if you will, and a Nevada license. And that's our concern.

CHAIRMAN WILSON: That's what I meant by storefront.

MR. MC AULIFFE: With respect to the larger firms, the notion that we would use a non-Nevada lawyer to have the final say on handling an issue for Nevada clients would be both on our part stupid and dangerous. We don't do things that are stupid and dangerous, but some lawyers do.

There are in the code — in the code there are restrictions that do apply to law firms. Law firms have a responsibility under 5.1 of the model code — I believe Nevada has adopted that — to make sure that there are policies and procedures in place to ensure that the lawyers in the firm comply with the rules of professional conduct, one of which is competence.

I would have no problem whatsoever with a requirement that law firms opening offices in the state of Nevada be required to register with the state bar of Arizona — state bar of Nevada. I'm sorry, and to advise the state bar of Nevada as to policies and subject themselves to the jurisdiction of the state bar of Nevada and advise the state bar of Nevada of what policies and procedures they have in place to ensure that there will not be the unauthorized practice of law and that people who are practicing law from that firm in the state of Nevada comply.

CHAIRMAN WILSON: What policies and procedures would you recommend that ought to be required by rule to guarantee what you're suggesting we ought to guarantee?

MR. MC AULIFFE: That very much varies according to the size of the firm and I think that's something I would leave to the discretion of the state bar of Nevada.

CHAIRMAN WILSON: Please understand — and you're leaving it to our discretion to recommend it to the Supreme Court and the purpose of this hearing is to ask you specifically what you might recommend would be a suitable rule that, one, would not be oppressive, two, would be wise, and, three, effective.

MR. MC AULIFFE: Require them to register with the state bar of Nevada.

CHAIRMAN WILSON: You're not talking about the Nevada admitted lawyers; you're talking about your lawyers in Phoenix?

MR. MC AULIFFE: No, require the firm, the firm as the entity, require the firm to advise the state bar of Nevada what policies and procedures they have in place.

CHAIRMAN WILSON: What would you recommend those to be?

MR. MC AULIFFE: Well, I can tell you what we do.

CHAIRMAN WILSON: That would be helpful. MR. MC AULIFFE: Okay. We have a managing partner in each office who must be admitted in the jurisdiction. We have a client review committee which
screens everything for conflicts of interest. We have an ethics committee which lawyers are obligated to consult with when an ethical issue arises. We have a lawyer quality committee which has the responsibility for doing quality control.

CHAIRMAN WILSON: Okay. I understand those. Those are fairly generic and appropriate. What is your policy with respect to lawyers resident in Phoenix of your office performing legal work for clients who are here in Nevada?

MR. MC AULIFFE: They may not do it without the supervision of a Nevada lawyer.

CHAIRMAN WILSON: What are the requirements and criteria for that supervision?

I'm not challenging what you say. What I'm trying to do is flesh out the issues of this discussion, to find out what may be workable, whether the idea has no effect or value or whether it's something we ought to talk about.

MR. MC AULIFFE: The Nevada lawyer must be responsible to the advice to the client or the final filings in the filing before the court.

I'm a litigator, but, for example, if I have a lawsuit up here and I've had a number of lawsuits up here -- I use a non-Nevada lawyer to draft a set of interrogatories or request for production of documents?

For sure I will. For sure I will. Will I file that? Will I allow that lawyer to put it in front of me and have me sign it and file it? Absolutely not? Because Judge Parraguirre is going to haul me up there and say: What do you think you were talking about?

I will look it over, and that's one of our requirements. Whatever jurisdiction we operate in, a lawyer admitted in that jurisdiction must approve any work product, any advice to a client before it goes out the door.

MS. PECK: Does that include transactional?

MR. MC AULIFFE: Yes. And we track that by knowing -- we track that by -- the managing partner tracks -- I don't know if you need to get into this level of detail, but the managing lawyer tracks that, and who has the last time recorded, you can tell whether that rule has been complied with.

MR. MOWBRAY: Your firm has presence in many jurisdictions. Do any of the bars in those jurisdictions have mechanism of the type Commissioner Wilson was addressing?

MR. MC AULIFFE: No, not that I'm aware of, but we wouldn't have a problem with it. We have Utah, Colorado, California, and they do not have any such restriction.

CHAIRMAN WILSON: Indulge me a minute. If we were to recommend ultimately this is good public policy in terms of the profession's activity in this thing, what would be the essential requirements of a rule which would define your firm's responsibility, the Nevada lawyer's responsibility and the lawyer's in your Phoenix office responsibility with respect to representation of a Nevada client?

MR. MC AULIFFE: I think the --

CHAIRMAN WILSON: The threshold issue here is assuming the public policy is what you're talking about is a good idea and the rules should provide for it and sanction it, how do we distinguish between and how do we provide an adequate enforcement measure between the storefront operation, which is not in good faith, which is a sham, how do we define the obligations so we can --

MR. MC AULIFFE: I'm going to take this from the ethics opinion coming from Arizona, which I'm familiar with, which is what does or does not constitute the unauthorized practice of law:

I think the rule 8, taking the assumption you're going to require the law firm to register, there could be a requirement and we would have no problem with a requirement that any legal services rendered for a Nevada client or involving issues of Nevada law be performed or supervised by a lawyer admitted to the state bar of Nevada.

That would be the requirement. Determining whether it was being complied with would have to be the subject of investigation.

CHAIRMAN WILSON: Of course that's an after-the-fact matter which as a practical matter would only arise in the event there was some kind of disciplinary complaint which puts the issue on the table and then you would have an investigation.

MR. MC AULIFFE: Mr. Wilson, naively I -- naively I believe that 98 to 99 percent of the lawyers in this country take the rules seriously, look at the rules and comply with them. The problem is the one percent that gets all the press.

CHAIRMAN WILSON: That's true. But I'm testing the proposition. As I said before, please indulge me, our job is to test the proposition, and the test is what -- what in terms of disclosure and enforcement would you recommend to ensure not just the bar and the court and the public that you've got adequate accountability and compliance on the part of lawyers in Phoenix doing work on a Nevada law through
your Nevada office for a Nevada client.

I'm not being adversary.

Mr. McAuliffe: I think the rules I just suggested to you would be adequate for the circumstances with respect to trying to have a proper prophylactic measure in effect that ensures rules are complied with rather than have a disciplinary measure after the fact. The only way to do that I think, Mr. Wilson, is to have someone from the state bar in Nevada sitting in every law office in the state, and I think that's unworkable.

Chairman Wilson: I would agree with that.

Mr. McAuliffe: Sometimes some problems can only be dealt with after the fact. I take comfort in the fact if people know what the rules are, this is the rules you have to comply with. I think if you're going to have a law office in the state of Nevada, I think 99 percent of the people are going to follow the rules.

Mr. Galatz: I have a particular problem with attorneys coming out of Phoenix doing personal work here. We start to set a deposition. We hear the guy in Phoenix has to set that. Then there is a document that's due and nobody seems to know where the documents are, and there is a major problem of communication.

coordination. The offices they use seem not well run.

That's an internal problem to some degree, but it's a problem from my point of view because I wind up, either myself or secretary or both of us, spending endless time chasing down what would normally be a rather simple thing.

And, yes, I know I can file my motion in front of Mr. Biggar and seek sanctions.

I have concerns as a practical matter with the problems of multiple offices dividing responsibility, this associate in Phoenix is doing work on it, this one here is doing some, meaning nobody knows what's going on.

How do we handle that other than telling me I can go to Mr. Biggar and get sanctions?

Mr. McAuliffe: That can happen to you dealing with a person holding a Nevada license.

Mr. Galatz: I haven't had that problem nearly as often as I have with people from Phoenix.

Mr. McAuliffe: What I suggest you do, because it tends to be fairly unworkable to always go to the disciplinary process or go to a court, we have something we call a peer review committee which functions — what they do, you call them up, you refer the matter to them and say, look, it's not unethical,

but it's really a pain in the you know where. It's unfortunate. And they get on the phone with the person and either call the managing lawyer or the partner in charge and say get control of this. And it's extremely effective.

Mr. Galatz: We have another committee to help solve this problem. It's another possible solution.

Mr. McAuliffe: In Arizona it has been extremely effective, and there's a very similar operation which is surprisingly effective to my mind because it's not a unitary bar in Massachusetts.

Justice Becker: Mr. McAuliffe, does the state of Arizona have a rule that allows them to actually sanction or initiate disciplinary proceedings against a law firm as an entity?

Mr. McAuliffe: Yes. We have adopted a rule 5.1 of the — well —

Justice Becker: I don't think 5.1 —

Mr. McAuliffe: The answer to that is no.

What has happened in Arizona is sanctions being — rule 5.1 is the rule that I mentioned earlier that says the law firm has responsibility. It has been invoked in at least two cases that I'm familiar with as a basis for imposing sanctions against a managing partner or what they call a supervisory partner.

I read that case very carefully because I'm the chair of our ethics committee and I think I fall under the category of people the ax might fall on against someone in a managerial position for the failure to have those policies and procedures in place.

But we do not have a rule that permits the imposition of sanctions against the law firm pro se.

Justice Becker: Do you see a problem with that rule if we would allow or encourage — because your point is in today's world clients in Nevada may want to seek representation from either a law firm that has a branch office in Nevada or even a law firm for transactional business that has a specialty outside of Nevada that they feel could represent them better than perhaps a Nevada lawyer.

Now, whether that's true or not, that's their perception, and what you're saying is the — that client ought to have that opportunity. So the issue is if we present that opportunity by redefining the unauthorized practice of law, do you have any objection or see any problem with having those law firms register and then the law firm is subject to sanction rather than the individual managing partner or supervising attorney?

Mr. McAuliffe: I will tell you that I
and there was a huge debate. It never even got to the
authorized the imposition of sanctions against law firms
far-flung office just loses it and goes off the farm
becomes subject to sanctions because someone in some
significantly substandard and
the firm has sounds grandiose. What it boils down to is
that we tend to become bureaucratic, and some degree of
bureaucracy is necessary. They've got an analogue to do
it.

I will also tell you I know there has been a
significant amount of resistance to propositions of that
nature. In Ethics 2000, which is the effort currently
underway to rewrite the ABA's model rules of
professional conduct, there was a provision which
authorized the imposition of sanctions against law firms
and there was a huge debate. It never even got to the
House of Delegates.

CHAIRMAN WILSON: But do you think it's a
good idea?

MR. MC AULIFFE: Depends on how it's enforced
and depends on what defalcations can lead to the firm.
The concern that has been raised to me is the firm
becomes subject to sanctions because someone in some
far-flung office just loses it and goes off the farm
without any warning whatever.

JUSTICE BECKER: It's their employee.

MR. MC AULIFFE: I know. That's what the
concern is.

Personally I don't have a problem with it.

The firm is responsible for what their people do.

CHAIRMAN WILSON: Judge Hardesty.

HON. HARDESTY: The problem seems to me with
that response is the underpinnings of your proposal are
down in Phoenix. You just call the managing partner or
the head of the practice group and say: I want to know
what your younger lawyer is doing, what your other
lawyer is doing. Sometimes that's effective. Sometimes
a call to the peer review committee is effective.

HON. HARDESTY: Isn't the truth of it, there
isn't much relief?

MR. MC AULIFFE: It's a very difficult
problem to keep tabs on because, you know, before I was
admitted up here I did practice law up here for one of
my clients who built the building across the street and
several other casinos across the street -- several other
buildings. That's not a casino across the street.

Before I could walk into a court I had to pay
and give information, and so there was a mechanism for
keeping tabs on me. The fact that I was doing it and
what I was doing and the transactional thing, it takes a
phone call or an e-mail message.

I don't envy you. I would not want to be in
your position to try and come up with a regulatory
solution to that problem. It mystifies me.

CHAIRMAN WILSON: I need to move our
calendar. Thank you for coming.

MR. GALATZ: I have a question, if I may.

Do you have any thoughts or comments

Page 33

(1) personally don't.
(2) I will also tell you I know there has been a
(3) significant amount of resistance to propositions of that
(4) nature. In Ethics 2000, which is the effort currently
(5) underway to rewrite the ABA's model rules of
(6) professional conduct, there was a provision which
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(9) House of Delegates.
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(11) good idea?
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(13) and depends on what defalcations can lead to the firm.
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(15) becomes subject to sanctions because someone in some
(16) far-flung office just loses it and goes off the farm
(17) without any warning whatever.
(18) JUSTICE BECKER: It's their employee.
(19) MR. MC AULIFFE: I know. That's what the
(20) concern is.
(21) Personally I don't have a problem with it.
(22) The firm is responsible for what their people do.
(23) CHAIRMAN WILSON: Judge Hardesty.
(24) HON. HARDESTY: The problem seems to me with
(25) that response is the underpinnings of your proposal are

Page 34

(1) all the committees that Snell & Wilmer has in place to
(2) provide assurances that these events are going to occur.
(3) The question that I was going to pose has to
do with smaller firms, the one- or two- or three-person
(4) law firm who doesn't have a plethora of committees,
(5) ethics committees and the like in place at Snell &
(6) Wilmer.
(7) What's the appropriate approach for that?
(8) Because, frankly, that's perhaps the bigger concern on
(9) the citizens of Nevada about hiring an individual.
(10) We've had some examples provided to us in the Elko
(11) hearings where a smaller firm of one or two people hire
(12) a first year law student to act as their representative
(13) in Nevada and they perform legal services for Nevada
(14) citizens which maybe are significantly substandard and
(15) these firms aren't going to have committees like you
(16) have talked about.
(17) What about that situation?
(18) MR. MC AULIFFE: My description of what the
(19) firm has sounds grandiose. What it boils down to is
(20) it's only seven people.
(21) HON. HARDESTY: Maybe they should be subject
to sanctions.
(22) MR. MC AULIFFE: Well, we are large enough so
(23) that we tend to become bureaucratic, and some degree of

Page 35

(1) bureaucracy is necessary. They've got an analogue to do
it.
(2) It can be the breakfast meeting. I'm
(3) familiar with some small shops in Phoenix. They have
(4) the weekly breakfast meeting where they review every
(5) case in the office and who's doing what. It's not
(6) called an ethics committee. It's not called quality
(7) control committee. Someone is managing that law firm.
(8) And if someone is not managing that law firm, there's
(9) nothing wrong with imposing a requirement that they do
it.
(10) HON. HARDESTY: Just one other area.
(11) The litigation side has some supervision in
the courts and the like. The more illusive problem
seems to me to be the transactional problem, and
Mr. Galatz just talked about the litigation problem.

What do you do in a situation where you're
trying to negotiate a large transaction, you're getting
the run-around by foreign counsel in the negotiations?

Running to the state bar is probably going to harm the
negotiations and harm your client's transaction.

What do you do in that situation?

MR. MC AULIFFE: I don't know. It's a
terrible, terrible problem. I know it goes on. Perhaps
you call the managing -- I know what happens sometimes

Page 36

(1) down in Phoenix. You just call the managing partner or
the head of the practice group and say: I want to know
what your younger lawyer is doing, what your other
lawyer is doing. Sometimes that's effective. Sometimes
a call to the peer review committee is effective.

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your position to try and come up with a regulatory
solution to that problem. It mystifies me.

CHAIRMAN WILSON: I need to move our
calendar. Thank you for coming.

MR. GALATZ: I have a question, if I may.

Do you have any thoughts or comments

Page 33 to Page 36
regarding extending pro hac vice to mediation, 

(2) arbitration?

(3) MR. MC AULIFFE: I think you should do it.
(4) I've handled three arbitrations up here for the former
(5) Nevada Power Company, and none of them was the law firm
(6) on the other side from the state of Nevada and in every
(7) one of them we had problems.
(8) MR. GALATZ: It doesn't bother you if we 
(9) extended that?
(10) MR. MC AULIFFE: Absolutely not.
(11) CHAIRMAN WILSON: Thank you.
(12) Drew Cass, please.
(13) MR. CASS: Thank you for the opportunity to 
(14) make some brief remarks.
(15) My law firm is the Law Office of V. Andrew
(16) Cass, an affiliate of Broening, Oberg, Woods, Wilson &
(17) Cass, which is a mouthful to say and a name we would
(18) like to reduce if possible.
(19) We operate a Nevada office that has
(20) approximately 10 attorneys, three waiting for bar
(21) results, have about 35 employees.
(22) The way that we operate doesn't implicate
(23) many of the more difficult issues that the commission is
(24) going to have to grapple with. We are a completely
(25) autonomous practice firm that is a litigation firm. We

(1) don't do transactional work. I'm a shareholder in the
(2) firm. I'm the managing attorney of this office, and so
(3) from a practical standpoint the Nevada office of my law
(4) firm is a group of Nevada lawyers. We all live here.
(5) We don't commute back and forth. We have local
(6) employees.
(7) CHAIRMAN WILSON: What other cities do you 
(8) practice?
(9) MR. CASS: Just Phoenix. I moved up here,
(10) established the office in 1994, been practicing law for
(11) 17 years, almost half of it now in Nevada.
(12) So really the single rule that is implicated
(13) by our presence in Nevada is the rule 199 issue, and
(14) from a self-interested standpoint that's the issue that
(15) I would like to talk about briefly.
(16) The rule 199 problem, the law firm name
(17) issue, of course, has been the subject of litigation.
(18) We filed a lawsuit, we were dismissed on procedural
(19) grounds any case that went to the Ninth Circuit.
(20) I think it's notable that rule 199 has been
(21) both the subject of a state bar committee evaluation in
(22) which a state bar committee in 1994 concluded that the
(23) rule was unconstitutional and has also been the subject
(24) of injunctions by both the United States District Court
(25) and the Ninth Circuit Court of Appeals.

(1) CHAIRMAN WILSON: What rules do you think 
(2) ought to cover the substance of your practice and your 
(3) relationship with the Phoenix office and your 
(4) relationship with both Nevada clients if that is to be 
(5) the policy of this state?
(6) MR. CASS: I think Mr. McAuliffe's comments 
(7) were very instructive. I think there's some very thorny 
(8) issues that arise when there is the practice of law 
(9) being directed from a distance. We don't have those 
(10) issues in my firm.
(11) I think that the primary line of defense 
(12) against these problems has got to be the existing 
(13) ethical rules in which individual lawyers who are 
(14) practicing in the state of Nevada, whether they're 
(15) licensed here or not, are subject to discipline if they 
(16) violate the rules.
(17) CHAIRMAN WILSON: Should the rule be that the 
(18) lawyer in your Las Vegas office be as a matter of fact 
(19) primarily responsible for the conduct of that Nevada 
(20) case representing a Nevada client?
(21) MR. CASS: I think that every lawyer who 
(22) appears in a litigated matter is fully subject to the 
(23) jurisdiction of the court.
(24) CHAIRMAN WILSON: That wasn't my question.
(25) My question was — the problem is who is primarily 

(1) responsible for the conduct of the work of the firm,
(2) whether it's in Phoenix or Las Vegas. You were saying 
(3) you're autonomous. You don't account to somebody who is 
(4) calling the shots in Phoenix. You manage your own 
(5) affairs and are in control of your clients.
(6) Should that be the rule?
(7) MR. CASS: I think that there should be 
(8) responsibility of a Nevada lawyer for a Nevada matter, 
(9) yes.
(10) CHAIRMAN WILSON: Primary responsibility?
(11) MR. CASS: That's a difficult question. I'm 
(12) not sure.
(13) CHAIRMAN WILSON: Your practice — you're 
(14) suggesting you made an internal decision the Nevada 
(15) lawyer is going to be responsible for the Nevada client, 
(16) and that's a good practice, you follow it, you adopted 
(17) it as a firm policy. That's what you do.
(18) My question is do you recommend that to the 
(19) committee for the purpose of recommending a rule to the 
(20) Supreme Court?
(21) MR. CASS: I think it's clearly the most 
(22) prudent thing for a lawyer to do.
(23) CHAIRMAN WILSON: I agree with that. My 
(24) question is a jurisdictional one. Should that be the 
(25) policy of the rule?
MR. CASS: I'm not sure you should recommend a black letter rule that the final word on a legal recommendation has to come from a lawyer who is licensed in Nevada. I think ultimately the lawyer who takes the position in court certainly has to be licensed and I think that a law firm at its peril sets up an operation where someone not qualified to undertake those legal services is the one performing those legal services, and I think if a —

CHAIRMAN WILSON: That goes to the number of the problem?

MR. CASS: It does. It does. But the question is how can — how can the bar control the activities of people that aren't present or practicing in the state? They're either practicing here or they're not, and the question then becomes what is the practice of law and when does getting input from a distant office constitute the unauthorized practice of law.

CHAIRMAN WILSON: Well, you've stated the quandary.

MR. CASS: I have. I wish I had come armed with specific solutions to add to the play and I certainly recognize the difficulty of it.

I do know that a rule which says, well, regardless of these very difficult nuance problems, one of the solutions we're going to impose is we're just not going to let you practice under your firm name doesn't direct you to practice under those firms.

JUSTICE BECKER: With regard to the firm name rule, one of the concerns is that the Nevada resident understand who they're dealing with, that they not be misled into thinking that all of their work is going to be performed by individuals licensed to practice law in the state of Nevada.

So if firms are allowed to practice under the firm name, what would you suggest be added to the rule in order to make sure that any Nevada resident dealing with the firm are aware exactly of what they're doing? Is it a part of the retainer agreement? Should it be asterisked to the stationery?

MR. CASS: I think the committee that was formed in 1994, one of their recommendations was to adopt in whole or in part the rule that had been adopted in New Jersey. I think it can be a combination of things. I think certainty the letterhead cannot be misleading. And there are certainly rules which could be put in place so that it is clear that if an individual lawyer's name is on a letterhead, any limitations of jurisdictional practice are noted on the letterhead.

As far as retainer agreements, it would not be harmful to have a rule that requires jurisdictional limitations to be set forth in retainer agreements. I'm not sure that really will solve much of the problem. For one there is a lot of legal work that can be done without a written retainer. Some work requires a written retaining agreement.

I think the narrow thing that will be addressed is that the public not be misled that Baker & McKenzie is not handling their case. I think a very specific rule about what can or cannot be said on an individual letterhead can solve that problem.

MR. GALATZ: From the way your firm is set up, do I gather that your policy decision as a firm is that there is a valid reason to have local counsel handling Nevada matters?

MR. CASS: Yes. We handle — the Nevada matters are handled solely by Nevada lawyers.

MR. GALATZ: Why do you think that's important to have Nevada lawyers doing Nevada work instead of Arizona lawyers doing Nevada work?

MR. CASS: Well, I think that, first of all, it's unethical to practice law —

MR. GALATZ: Right, but —

MR. CASS: From a practical standpoint, some of the problems that you pointed out earlier in terms of the practicalities of getting the day-to-day business of law done, certainly when you add a layer of stages to it that makes logistics more difficult.

MR. GALATZ: Communication. Any other reasons?

MR. CASS: Well, I think from a business standpoint you're not going to be serving the interest of your clients very well if you are inefficient. And so to be efficient from a business standpoint, to be effective from a legal standpoint, at least for me, I need to be in my office in Las Vegas, Nevada where my practice is.

MR. GALATZ: Do you think knowing your local bench and who your adversaries are locally presents any benefit to your client?

MR. CASS: I think there is an absolute benefit to the client with having lawyers who are familiar with other members of the bar and the bench. That doesn't mean that lawyers who practice primarily...
outside the state, but who otherwise become qualified to practice in Nevada should not be allowed to practice here. If they have a disadvantage because they know the judge, they don't the procedure, they don't know their adversary counsel, they either can get themselves up to speed and be effective. If they can't, the work is going to go to somebody else. I think the competition is going to take care of that. Certainly a lawyer who practices in multiple jurisdictions has a responsibility to do whatever is necessary to serve the interest of his clients so they're pleased from a business standpoint and comply with any court laws.

MR. GALATZ: All major clients potentially can exert some influence on a law firm. I had an impression — and it's only an impression. There is no — I have no evidence, just an impression, but part of the impression I get is the firms that cross multijurisdictional lines, at least in some instances, have been almost captives of one or two major clients, and the fact that their firm goes across lines only makes them a larger captive. I don't have empirical proof. This is a feeling from what watching and discussing.

Page 46

Have you any thoughts, comments on this concern? Potentially a local firm can be controlled, but it seems to be even more noticeable as an impression. That's all I can give it is an impression on the multijurisdictional?

MR. CASS: I haven't studied it. I think certainly there seems to be a variety of types of firms that are involved here. Certainly my firm which has less than 40 lawyers in total is quite dissimilar to Snell & Wilmer, which has, you know, hundreds of lawyers.

And so I think that perhaps there might be examples of firms who have come here who have as a primary client some corporation, an insurance company or some other entity that provides with the lion share of its business.

I'm not sure if that problem is exacerbated by the fact that it's a multijurisdictional law firm. I don't know that's true.

CHAIRMAN WILSON: Judge Hardesty.

HON. HARDESTY: Mr. Cass, we kind of got away from your primary presentation, which was the subject of rule 199.

My understanding is that our Supreme Court is going to ask this commission to make a recommendation as to any changes to that rule. Do you endorse — I believe it's ABA 7.1 and specifically under subparagraph A there is an issue concerning firm names which are trade names. Could you comment on those two subjects?

I think I have the correct section.

MR. CASS: Trade name in terms of something other than a lawyer name in the firm name?

HON. HARDESTY: First two questions — do you endorse 7.1 and, if so, do you have any qualifications or concern about subparagraph A, I think the section that contemplates the use of trade names in lieu of an actual individual's name in the firm?

MR. CASS: I would have to review 7.1 to see if it is consistent with the New Jersey rule which was recommended.

HON. HARDESTY: So you're advocating the New Jersey rule?

MR. CASS: I certainly view that as a reasonable starting point. Okay. With respect to the use of trade names, honestly I've given no consideration to that. We've never contemplated the idea of calling ourselves something other than the name of our firm.

HON. HARDESTY: As a lawyer in Nevada what do you think about that, like Joe Blow's Bankruptcy Shop?
Page 49

City of Las Vegas with the City's Attorney's Office, and as I made plain from the letter and the memo that I submitted in advance to the committee my focus here is very, very narrow. It's a concern that implies -- or implicates I should say no anticompetitive concerns on my part concerning my practice and it really is relevant insofar as becoming a concern for me because of my service to the bar and the state committee of moral character and fitness and relates specifically to unlicensed in-house practice.

I don't want to repeat the arguments and the information that I have supplied in the memo, but I would ask that the commission be cognizant of the fact that we usually have a trio of alternative elements of definition of practice of law, and that is the practice of in-house eliminates the first and that is the representation of a person in court.

The holding out aspect about whether or not one represents oneself to be an attorney again avoids the in-house practice of law because they haven't hung a shingle and gone out and mislead anybody that they're practicing in Nevada I do believe is relatively unimportant because it isn't up until a fee is paid that I think in this trade you could ever construe any damage, and certainly the greatest potential for damage comes from that which flows after the fee is paid or when actual legal work is undertaken insofar as giving advice and drafting documentation.

Finally, I would ask you to discount the argument that I have read of -- I've never had an unlicensed attorney practicing in the state actually offered to me, but I've read it and read of it being used as an excuse about the sophistication of the client weighing in this consideration.

In my mind that argument is utterly useless.

You can imagine --

MS. PISCEVICH: How? I have a question now, though. What about sophisticated clients such as a utility company or telephone company or someone -- for example, they merge, Nevada and California merges with Texas or something and they're only going to be practicing for that client, but they obviously might need to do regulatory work or something else? Do you think that they should not be allowed to do what they're trained to do which is a very specialized area without taking the bar? Should they register and be subject to the bar?

MR. REDLEIN: I believe that they should not be able to practice law in the state without the benefit of a license. Even on a narrow subject where they have some expertise on is still very, very dangerous.

To get back to the issue about the sophistication of the client, I can imagine a range of possibilities where the sophistication of the client cuts directly both ways in this argument, ranging from the unlicensed practitioner so bold to hang out a shingle on the street saying I do divorces, I do wills.

The client may know this person is unlicensed, but says that's why I like to go to him, because he's cheap.

MS. PISCEVICH: I'm not talking about that.

I'm talking about a lot of these things are federally governed. A lot of the regulations you deal with are federal. Obviously there will be some state. That's what I'm saying.

Do you think that that needs to actually be licensed to practice in Nevada if you're going to be --

MR. REDLEIN: Your example is particularly apt. I've had experience with that. It may be perfect example because they're concerned about federal law and FCC regulation primarily.

Yes, my argument that that lawyer is more --

Page 50

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Page 51

is -- the argument that that lawyer is more likely to be of value to that firm -- to that client without the benefit of a license is certainly present, can be made and has some validity; but as you said in your question clearly Nevada law is implicated often and you need to understand that even the largest interstate communication provider with its in-house attorney has innumerable questions coming to them every day that don't necessarily follow the interpretations of United States Code.

MS. PISCEVICH: Can't you hire outside counsel?

MR. REDLEIN: Of course you can. They usually don't.

Let me go back to something that I believe may not be plain insofar as what it means when I said it, that is, the degree of the sophistication of the client shouldn't enter into this evaluation. As I said in one sense we might have a sophisticated client insofar as that client is merely knowledgeable that the attorney lacks a license and is therefore getting a bargain for the services. That's a degree of sophistication that the client is being hoodwinked.

We can have the sophistication of the client who can follow the unprofessional judgment in the
Page 53

(1) corporate realm because there is a lack of licensure.
(2) We could have the sophistication of the client not quite
(3) go so far and implicate the situation where he says I'm
(4) sophisticated enough to know as a member of this board
(5) of directors if I ask legal and they tell me this is a
(6) appropriate course of action for my publicly held
(7) company, I'm not going to be implicated.
(8) Finally I would suggest to you that one of
(9) the tests of the relevance of the sophistication of the
(10) client would be not to simply discount the practice of
(11) law insofar as the element that involves going into
(12) court, but to include it.
(13) It's certainly not common for in-house
(14) counsel, but it's useful in testing the sophistication
(15) of the client issue if we think for a moment about
(16) criminal law and representation in court. What possible
(17) difference could it have — and this might be the most
(18) hideous damage that we could imagine — that an
(19) unlicensed lawyer is representing somebody when his life
(20) is on the line for a murder prosecution in state court?
(21) I can tell you I have also had that
(22) experience in state district court on a murder for hire
(23) case where an Arizona lawyer filed a pleading and stood
(24) up and argued and I waited for him to open his mouth to
(25) tell the judge I had check his licensure status.

Page 54

(1) CHAIRMAN WILSON: Justice Becker.
(2) JUSTICE BECKER: Mr. Redlein, I just wanted
(3) to clarify something. Are you here today in your
(4) individual capacity?
(5) MR. REDLEIN: Absolutely.
(6) JUSTICE BECKER: So we need to correct the
(7) agenda that has your position listed because you're not
(8) speaking as a — in your capacity as an assistant city
(9) attorney; is that correct?
(10) MR. REDLEIN: Correct. The cover letter that
(11) I submitted with my memorandum I made plain that I do
(12) not speak for my fellow members of the subcommittee for
(13) fitness and character and I do not speak for my clients.
(14) I speak as a concerned member of the bar.
(15) JUSTICE BECKER: Thank you.
(16) CHAIRMAN WILSON: Thank you, John.
(17) Robert Ryder.
(18) Robert Ryder.
(19) Cam Ferenbach.
(20) Cam Ferenbach.
(21) Maria Nutile.
(22) MR. WALLIN: My name is not Maria, but I'm
(23) here on behalf of our firm of our firm. My name is Troy
(24) Wallin. I'm with the law firm of Curtis & Associates.
(25) I just wanted to add a couple comments based on my own

Page 55

(1) experience.
(2) As you can see I still have a full head of
(3) hair and most of —
(4) CHAIRMAN WILSON: Some of us don't as a
(5) matter of fact.
(6) MR. WALLIN: I'm still a little bit new to
(7) the bar and admitted —
(8) CHAIRMAN WILSON: I thought you were speaking
(9) to your qualification.
(10) THE DEFENDANT: Hopefully you won't hold that
(11) against me.
(12) I'm admitted in Maryland and in Nevada and I
(13) started my practice with a Washington, D.C. firm before
(14) coming to Nevada and spending some time with Jones
(15) Vargas and Kummer Kaempfer Bonner & Renshaw.
(16) No. 1, being in Washington, D.C., as I'm sure
(17) most of you are aware, you talked about storefront offices
(18) where they have a local office that basically is doing
(19) all the work out of state. I can tell you that's a
(20) rampant practice and it's — it usually occurs not from
(21) firms that are even using the name or affiliated name.
(22) It usually occurs you engage local counsel, you do all
(23) work out of state and you have them do all the
(24) filing and the appearances as necessary.
(25) So my point with that would be that if you're

Page 56

(1) going to allow that, you might as well allow the firm to
(2) use the name so the client knows who they're dealing
(3) with.
(4) CHAIRMAN WILSON: Should we allow that?
(5) MR. WALLIN: No, I don't think you should
(6) allow out-of-state attorneys to practice Nevada law
(7) unless they're licensed to practice here. And I'm
(8) saying that the practice is occurring and I'm not sure
(9) exactly how you can cut back on that, but I'm saying you
(10) can encourage the practice of law legitimately here by
(11) allowing out-of-state firms by actually opening up
(12) offices and using the name of the firm that is actually
(13) doing the work.
(14) MS. STURMAN: Mr. Wilson, may I ask a
(15) question?
(16) Further as corollary to the concern we have
(17) about storefronts, you mentioned something there are
(18) attorneys who don't reside in the state of Nevada but
(19) who practice here.
(20) Some of these people don't even have
(21) storefronts. They have post office boxes or Mailbox
(22) Etc. or Post Net locations, and they tell you, well, you
(23) can serve me personally there at the Post Net offices
(24) because the guy behind the desk will sign for it.
(25) Is this what you're talking about? It's
Page 57

(1) literally no physical presence in the state of Nevada at all, but technically the person is admitted. They're just practicing out of state.

(2) MR. WALLIN: I'm more referring to actually engaging local counsel that has a legitimate Nevada presence but is a small law firm that isn't capable supposedly, but physically present in Nevada, they're able to accept practice. They just don't have the capability to handle a larger case.

(3) HON. HARDESTY: You're indicating a practice that, frankly, I'm familiar with before I became a judge. There's a lot of lawyers in Nevada who are essentially operating as fronts for out-of-state counsel; is that right?

(4) MR. WALLIN: Exactly.

(5) HON. HARDESTY: When that occurs, they're not controlling the litigation. In fact a lot of them don't even know what's going on. They just file the papers, get a fee at the end maybe.

(6) MR. WALLIN: Right. Hopefully they're doing their due diligence and reviewing the documents.

(7) HON. HARDESTY: But your experience is different from that, isn't it?

(8) MR. WALLIN: Again I was a young associate and I just know I did Nevada law work at an out of state

Page 58

(1) Washington, D.C. firm and we hired local counsel and we did most of the work. They did the filing, they did the appearances, and my assumption was they were reviewing all the documents to make sure they were comfortable with it, but most of the leg work was being done out of state.

(2) My point is if that's being done anyway, you should allow those firms that are doing the work to have a storefront here in Nevada so people can recognize this.

(3) MS. STURMAN: You were not associated pro hac vice in those cases?

(4) MR. WALLIN: No. Occasionally some of the senior partners would become associated that wanted to make an appearance, but a lot of times they would just have local counsel do the appearances.

(5) So that's one of my points.

(6) My other point is as to Mr. Galants' comment regarding the —

(7) CHAIRMAN WILSON: Galatz.

Page 59

(1) in Reno that were not available in Las Vegas that were asked to do work that I would submit would be just as difficult as an out-of-state firm to communicate and coordinate with.

(2) CHAIRMAN WILSON: Let me ask you the harder question, and that is: What should the rule be? What should the judicial policy be as to a lawyer's accountability and who is doing the work and who has been admitted and is otherwise qualified?

(3) I understand what you're saying as to what the practice is. One of the reasons I guess we all ended up on this commission with instructions to have an inquiry is there concern about the practice, whether the practice as you just described it is really in the public interest and is a good thing or is not a good thing.

(4) So in a perfect world what would you recommend?

(5) MR. WALLIN: As a member of the bar and a member of the public I would recommend whoever is doing the work is accountable.

(6) CHAIRMAN WILSON: How would you make them accountable if they were in Washington, D.C. and didn't have a ticket and referred the work to a Nevada counsel?

(7) MR. WALLIN: I think hopefully if you allow firms to come in, then you have more to direct accountability for the work that is being done.

(8) CHAIRMAN WILSON: Why does this make them more accountable?

(9) MR. WALLIN: Because there is a name on the line.

(10) CHAIRMAN WILSON: What if the firm is required to registered? For example, as some have suggested, they have offices out of state, they have an office in state, but the firm itself is registered and the firm is subjected to sanctions if something goes wrong. Is that adequate?

(11) MR. WALLIN: I think that's a good start.

(12) CHAIRMAN WILSON: What takes it down the road to a solution, if that's the right word?

(13) MR. WALLIN: I'm appearing as a member of the bar and a member of the public. I think it's important that the members of the public understand who is representing them and they get fair and adequate representation on all matters.

(14) I think in order to do that they need to understand who is representing them and they need to feel the person representing them is accountable and can handle the matter.

(15) CHAIRMAN WILSON: Does that mean the lawyer
Justice Becker, they are employees of the firm and they should be responsible for the work that they do. I'm not going to disagree with my colleague, but I think if a Nevada lawyer, whether it's an office, a satellite office of an out-of-state firm, we need to understand they're accountable for the work they do and subject to sanctions just like anybody else whether they're based in Nevada or not.

MR. TURNER: Would it be acceptable to subject the firm as an entity to sanctions?
Page 65

(1) a policy with Travelers in any litigation that arises out of the state of Nevada?

(2) MS. CISNEROS: That's correct.

(3) JUSTICE BECKER: Just wanted to clarify that.

(4) MS. CISNEROS: Right. That's why I wanted to clarify the position of most insurance carriers that are opening offices in the state. We all are members of the Nevada bar. It's different from those situations that Mr. Redlein was referring to.

(5) I must qualify, Justice Becker, my firm does represent Travelers when Travelers is a named defendant and also in those cases involving subrogation rights wherein plaintiffs would be the named plaintiff.

(6) JUSTICE BECKER: As long as a conflict doesn't rise?

(7) MS. CISNEROS: Correct.

(8) As I said, most of — a large majority of our practice is dedicated to the defense of subcontractors involved in this defect litigation, and in terms of our constitutional obligations this client I think that any time that — because one of the criticisms of in-house counsel with insurance companies is a conflict of interest between the insurance company and your client, and my point with that I believe the commission needs to be made aware of is that any hint of potential practices with respect to that zealously.

(9) CHAIRMAN WILSON: Commission questions?

(10) Thank you very much.

(11) Why don't we take a short break and we'll resume in about five minutes.

(12) (Brief recess taken.)

(13) CHAIRMAN WILSON: Why don't we reconvene and we'll try and catch up with the clock.

(14) Jennifer Taylor, please.

(15) Commissioner Biggar.

(16) DISCOVERY COMMISSIONER BIGGAR: Gentlemen, Tom Biggar, Discovery Commissioner for the Eighth Judicial District Court.

(17) I had not planned to speak today, but after listening to a number of comments thus far I felt it might be important to at least be able to verify to you some of the things that are happening at least in the Eighth Judicial District Court involving out-of-state counsel as opposed to counsel who are Nevada counsel, live here and work here on what I would call a permanent basis.

(18) And I wanted to just — I tend to see all of the initial appearances more or less by counsel in the civil litigation in Las Vegas, and I just wanted to point out a couple of things in this narrow area of discovery, and if you have any questions, I would be glad to respond to them.

(19) Contrary to what perhaps Mr. McAuliffe discussed, I usually see initially young counsel with one or two or three years experience first of all appearing on discovery motions, routine or otherwise; and I chagrin to say often when they are part of what may be referred to as a multijurisdictional law firm, that there are more problems than when I'm dealing strictly with local counsel.

(20) For example, unfamiliarity with the rules of procedure, whether they're local or in Nevada Civil Page 66

(1) coverage issue or any type of other issue that would lead to a conflict question, we — because we are aware of that heightened scrutiny at the onset we will take measures to either obtain written waivers or simply get rid of that case and send it to outside counsel.

(2) So we are very aware of that and ensure that our clients are protected in any way with that.

(3) I have sat down with subcontractors that are simply confused and do not understand what is going on with this litigation that’s exploding here in the valley and can assure them that their interests are of paramount concern and that we defend our clients with respect to that zealously.

(4) CHAIRMAN WILSON: Commission questions?

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(10) Commissioner Biggar.

(11) DISCOVERY COMMISSIONER BIGGAR: Gentlemen, Tom Biggar, Discovery Commissioner for the Eighth Judicial District Court.

(12) Rules of Procedure is commonplace, not that that does not sometimes happen with all young counsel or with more experienced counsel that are from another part of the state first appearing in the Eighth Judicial District, but it is almost routine and common when we’re dealing with the firms who are multijurisdictional.

(13) Another thing that is especially troubling are the special requests that I get from out-of-state counsel, special requests for dispensation simply because of the fact that they are not here in Las Vegas, that they’re in Sacramento or in Phoenix or somewhere else.

(14) And instead of a personal appearance, because that would be — increase the cost for their client, they don't want to make an appearance on a discovery motion, but they would like to do it by telephone if possible, not for anybody else’s convenience except their own.

(15) If they have to come down on a motion to compel, something as simple as that in civil litigation and they’re successful on their motion to compel, then they not only want attorney's fees for the preparation of their points and authorities, for instance, but they want travel expenses and sometimes overnight lodging expenses to be added on.
Page 69

(1) And I felt — always felt that that was unfair to tax the other side with that even — whether
(2) or not there was a legitimate discovery dispute,
(3) assuming there wasn't for a moment, still should the other side be taxed for those additional costs because
(4) counsel has to come in from another jurisdiction.
(5) As Mr. Galatz pointed out, I have many
(6) problems — looking at it just from the court viewpoint,
(7) many problems with communications on routine motions.
(8) Counsel do not get their papers in — this is the mundane part of the practice. They don't get their
(9) papers in on time. They don't abide by the local rules of — for timely responses and replies and so forth.
(10) If there is a dispute at a deposition is
(11) another example I found. And I've been a long-time
(12) member of the California bar prior to the time I became a
(13) member of the Nevada bar. Unfortunately, 30 years now,
(14) and the deposition procedures for California counsel I find a lot of times are simply not as professional as
(15) they are with almost all Nevada counsel.
(16) I don't know what to attribute that to except
(17) perhaps somebody mentioned the quality of the bar, the small bar, the litigation bar. In California one counsel on one side usually doesn't see counsel on the other side except in one case, so they feel a little
(18) freer to make, let's say, objections that are not quite
(19) well founded and engage in other kind of behavior that is not appropriate.
(20) And I, you know, don't cast dispersions;
(21) there are good attorneys and bad attorneys in all states. But I have found by experience and empirical evidence that that is the case.
(22) I had counsel the other day represent to me in court that late discovery, discovery that was running
(23) up toward the time of trial that was currently set and the trial had been set in Las Vegas was about two years since the complaint had been filed. Counsel in — California counsel informed me, well, this case was going to be to have continued any way because this two-year setting is like the quickest setting they had ever seen and obviously their request for continuance was going to be granted on that basis alone and I shouldn't worry about any discovery problems they're having.
(24) All it does is demonstrate they're unfamiliar with what we're trying to establish here in the state of Nevada.

Page 70

(1) CHAIRMAN WILSON: What do you think the rules ought to be in terms of participation of out-of-state counsel whether it's pro hac vice or whether it's in a firm that may have offices both in Nevada and Sacramento or Los Angeles or Texas?

Page 71

(1) DISCOVERY COMMISSIONER BIGGAR: I
(2) refer you back to the statute which states that pro hac vice
(3) should be pro hac vice in my opinion. You should not be
(4) practicing here unless you're a member of the Nevada bar or you've obtained pro hac vice status for each and every person who works on a particular case. That may sound like an extreme position, but I think that's the only position in good conscience that I could advocate as a representative of the court in what I do.
(6) I have — I have excellent counsel who appear in my court quite often from Sacramento, specialize in medical malpractice defense. Even with them they have
(8) local counsel here in Las Vegas to do some routine appearances, and even thought they have quite skilled counsel and I can understand why their clients would want to hire them on a regular basis, because they're quite skilled trial counsel, but they can't always appear on time, and when I get local counsel, they appear, but they're not prepared, they're not prepared to discuss the problems that we have in Las Vegas, whether it be with motion practice or scheduling practice, which is very important to the courts in trying to keep their schedules and keep a — a good name for the courts, not just for lawyers.

Page 72

(1) CHAIRMAN WILSON: These California counsel are admitted pro hac with Nevada counsel?
(2) DISCOVERY COMMISSIONER BIGGAR: In my opinion, they are, and I still have the problem.
(3) CHAIRMAN WILSON: But they're not responsive to schedules and calendar?
(4) DISCOVERY COMMISSIONER BIGGAR: That's correct. And I have — you know, and I've had for lack of a better term go-arounds with these particular counsel, and it's gotten better, but it's only been after a period of give and take where they make more appearances in person and they are aware of the problems.
(5) CHAIRMAN WILSON: We have a question for you. Ms. Piscevich.
(6) MS. PISCHEVICH: I was just thinking, for example, the Sacramento attorney counsel. I know in federal court they will do motions and not obviously trials or evidentiary proceedings, but motions by telephone which obviously keeps the costs down for those people and people call in from all around the United States.
(7) Would that help with the rules down here, if you allowed such a system to come in to play where you could do it by telephone and then you would have the
Page 73

1. actual trial counsel? You would have the actual people involved in the litigation and you would also save a lot of time and money on costs for those individuals that are allowed to practice. Would that help?

2. DISCOVERY COMMISSIONER BIGGAR: It probably help to some degree, but our system is not set up for that. We also -- it becomes a money problem for our particular court.

3. And then that combined with the volume of business that has to be undertaken by our office, for instance, sometimes it's impractical to conduct a lot of telephone conferences.

4. Federal court is a little different. They don't quite have the volume of business that we do, particularly in the Eighth Judicial District.

5. Like I say, it becomes a question of, well, none of the local attorneys would have to do that, but anytime we had out-of-state counsel, they would insist on that.

6. CHAIRMAN WILSON: Judge Hardesty.

7. HON. HARDESTY: Mr. McAuliffe was making some of his points, when you're — at least all of the attorneys are here and we don't have that problem a lot. There's a couple of key places, one being the Laughlin/Bullhead City area in Arizona and Nevada and will have one law office, and frequently this makes it difficult for us to serve things or conduct them at the last moment.

8. Are we limited to coming to you for some assistance if there are discovery problems in a discovery matter or should there be some rule that you have a physical presence in the state of Nevada?

9. DISCOVERY COMMISSIONER BIGGAR: There should be a rule.

10. I have that problem a lot. There's a couple of key places, one being the Laughlin/Bullhead City area in Arizona and Nevada and will have one law office, and usually once again I point out these are not the major law firms, but these are the one- or two-person law firms who want to have a shop in both places, but don't want to spend the money to have an office in both places, and that impacts the court all the time.

11. CHAIRMAN WILSON: Let me ask you the hard question, Commissioner. What should the rule be?

12. DISCOVERY COMMISSIONER BIGGAR: I would like to supplement what the commissioner has said. In the Second Judicial Court our phone system will not accommodate more than two people on the telephone, and we have a system where...

Page 74

1. we have financial constraints that affect the funding of our operations, that limit our ability to do those kinds of things.

2. I don't know whether the Eighth has that same kind of funding system.

3. DISCOVERY COMMISSIONER BIGGAR: It's a continuing funding problem, I can assure you.

4. The other thing I would say, even when Mr. McAuliffe was making some of his points, when you're an attorney practicing in one state, to do a competent job in my view it's extremely difficult to keep current even with the one state's law when you're practicing in state court and to try and keep current on the -- on whatever your areas of expertise, particular in more than one state it becomes too much of a burden.

5. As you saw, Mr. McAuliffe was here just to speak on this one particular problem; but when he has to refer to ethical concerns, he had to fail back. His experience is with Arizona and Arizona opinions and he couldn't be expected to come up to speed on all of the Nevada background just to testify today.

6. MS. STURMAN: Commissioner, I have a question. It's sort of a jurisdictional issue.

7. There are many attorneys who while technically possessing Nevada licenses do not have a physical presence in our state. They may claim to have an office, but when you investigate, actually go to the office and serve a paper, you find out it's really a post office box at a Mailbox Etc.

8. When I call the local phone number, it's forwarded to San Diego or Sacramento or someplace else.

9. Frequently this makes it difficult for us to serve things or conduct them at the last moment.

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Page 75

1. before, I think that the rule should be -- and, of course, there's constitutionality questions, but I think the rule should be if you want to practice in Nevada, that you should be a resident of the state of Nevada, except for those occasions anybody is certainly entitled to the counsel they want, and if they live outside the state of Nevada, they should apply for pro hac vice consideration and come in here and practice.

2. If the rule is that a firm can have an office here -- and I deal quite a bit for instance with Mr. Cass's firm, Snell & Wilmer not so much, but Mr. Cass's firm does it in a way, all of the attorneys -- at least all of the attorneys are here and we don't have this out-of-state communication problem.

3. As far as those final decision questions and who should be responsible if it's coming from out of state, I really don't have the answer to that. But I think that if we have all attorneys who work on any particular file either must be licensed or come in on pro hac vice on any particular case, at least the bar, the state bar would have and the courts would have the ability to police their matters in a more proper way, and I think that opening the situation up making it more liberal than it is now would be a great mistake.

4. MR. TURNER: My only concern would be that...
COMMISSION ON MULTIJURISDICTIONAL PRACTICE PUBLIC HEARING
FRIDAY, SEPTEMBER 28, 2001

Page 77

the limitation, severe restrictions of the practice of law in Nevada, while very jealous of that practice, might limit the development and growth of business and transactional — commercial transactions, sophisticated securities practice, and those matters that take areas of expertise that of yet we may not have the horsepower for.

Do you think then we should expand the number of times pro hac vice is allowed? Because even with pro hac vice there's only a certain number of clients that a law firm can be given that. I think it's five times, is it not?

DISCOVERY COMMISSIONER BIGGAR: It's that many. I think there is a number wherein the court can extend —

MR. TURNER: At its discretion.

DISCOVERY COMMISSIONER BIGGAR: Right.

MR. TURNER: Do you think any severe restrictions of the practice here can count down the ability of a client to have the representation by his lawyer that has an expertise and the horsepower? This concerns me.

DISCOVERY COMMISSIONER BIGGAR: Why, but counsel come to Nevada and obtain a license. All right. I mean that's a routine thing.

Page 78

Then they return to New York and are able to engage along with local counsel — even firms like you have in the transactional business will often have local counsel, then I think everybody is responsible, and it would — it would be possible to do it that way without unfairly restricting the practice or the growth, either.

MR. TURNER: Thank you.

CHAIRMAN WILSON: Any questions?

MR. GALATZ: Mr. Biggar, do you agree that the pro hac vice should be extended to the mediation and arbitration proceedings?

DISCOVERY COMMISSIONER BIGGAR: My impression was that as far as the court and arbitration program, which are minimum cases, I thought pro hac vice would apply to any case that was filed. I thought pro hac vice would already apply that, just participating in the arbitrations that are here in Nevada.

MR. GALATZ: Thank you.

CHAIRMAN WILSON: Thank you, Commissioner. Shirley Parraguirre, please.

Page 79

Like Tom, I did not plan on making any presentation here this morning. I had breakfast with John Mowbray a week ago on another matter we're dealing with and the subject of this meeting came up and he requested that I submit two issues to you.

John has told me that he's going to pass it on to the rest of the committee.

Since I've been in office I've asked our district attorney one having to do with rule 42, association of counsel, and the question is should I be requiring local counsel on the filing of foreign judgments by out-of-state counsel and the same question with regard to the issuance of foreign subpoenas.

I received a draft district attorney's opinion that's several pages long, the end result being it's a good question; however, perhaps you ought to take it up with the local judges or the state bar because, one, that might be attendant to rule 42, but it would also fly in the face of being most costly to out-of-state people to enforce judgments. I do not have an answer to that.

The second one I brought up with John, what is the obligation of my office to file documents which are not in proper form pursuant to at least our local rules 7.20.

Page 80

Mr. Biggar and I see it all the time and has already alluded to the fact this is just not from out-of-state attorneys. We have local attorneys who, unfortunately, do it the same thing.

But I am called out to our front counter on a fairly regular basis with either an out-of-state firm, they might have what you're calling as a storefront office here. The most recent was one day last week they wouldn't take my staff's answers for something so they requested that they speak to me and that was one of the issues.

Although we do not, because of a couple Supreme Court decisions, refuse to file any documents, I did ask for guidance. This one particular out-of-state attorney was saying: Well, but I don't practice here very often and can you cut me a break here and let me file it regardless?

So Mr. Biggar and I have discussed these matters from time to time.

So there again I received a even longer I think draft DA opinion which basically said the same thing: We suggest you go to your judges or the state bar to see what they think.

I haven't had any response yet from the local state judges, and that is why I believe John suggested

Page 77 to Page 80
Page 81

that I submit it to you, which I have done so. Whatever
you decide I would be happy to abide by.

MS. PISCEVICH: I’m just curious, I’m know
there is a lot of pro per practice. If the pro per are
not in the exact same form, do you still file those?

MS. PARRAGUIRRE: Yes. When you see my
request for the DA for opinion, I believe that is my
last question. Should we be treating those differently?
Do we take that as a practical matter? Yes.
We basically take at this point anything that
comes across the counter. Once in a while we will
Receive Stamp something as opposed to filing it.
The actual problem internally with my office,
now we’re sitting here keeping a lot of matters that are
just received and we don’t know when they’ve been
corrected and come back across the counter. So now we
just got them sitting there and they really serve no
purpose. We do treat them differently at this point.

MS. PISCEVICH: But if the pro per are filed
out of more fat, are the, quote, legal documents whether
it’s an out-of-state attorney or an attorney from a
different counsel filed?

MS. PARRAGUIRRE: Basically at this point we
do all of them that way. If they come in, they file
them whether they’re in proper order or not. That’s
Page 82

part of the DA’s opinion or request whether we should be
doing that for Nevada lawyers.

MR. GALATZ: How big is the problem? How
frequently does this arise?

MS. PARRAGUIRRE: On a fairly regular basis,
Mr. Galatz. And we get, my guess is — and I don’t
recall the stats, but I think on the foreign judgment
issue, I think we see 70, 80 filings per month that’s
done on foreign judgments and a large number on the
subpoenas for foreign jurisdictions as well.

I’ve had one local judge say, well, perhaps
you shouldn’t require that they have local counsel on
the foreign judgments unless they begin execution
proceedings here.

Well, again what that poses with my office,
if they walk to the front counter and they want
execution issued, then we don’t have the time to stop
and go back and see whether or not it’s a foreign
judgment or whether they should have already paid their
initial filing fee upfront prior to that.

So although it’s a good solution, it would be
hard to make workable, I think.

CHAIRMAN WILSON: Thank you very much.
Debbie Amigone.

MS. AMIGONE: I was just planning on

Page 83

attending. I wasn’t going to speak. But I just see
that you have all these attorneys here and I just wanted
to speak as possibly part of the general public.

And I have worked in some law firms here in
town as a legal secretary and I’ve also worked for some
publicly-traded companies and I think there’s two
different issues that are concerns in my mind and that
would be like the litigation and the court issues and
also the transactional issues.

And I agree that for the court issues, I
really feel that you should be licensed in the state of
Nevada to go in front of court and -- excuse me, I’m a
little nervous here talking, but when I was with the
publicly-traded companies and they had their securities
counsel, they actually started in Utah and moved into
the state of Nevada and they wanted to keep their
current securities counsel who they trusted and they
knew, and for them to have to hire securities counsel
here in the state of Nevada, they weren’t -- they didn’t
want to do that because they were comfortable with who
they had, and if they were to have to hire Nevada
counsel and keep both of them, that was an extreme
expense.

And I just feel from the general public that
a corporation for transactional matters, I don’t know,
(1) I want to disclose that I am somewhat of a
interested party in the challenge to rule 199.

CHAIRMAN WILSON: We're all interested
parties here —

MR. MEAD: Thank you very much.

CHAIRMAN WILSON: -- in one way or another.

MR. MEAD: I am also somewhat embarrassed,
frankly, because I have heard the comments of
Commissioner Biggar and others about other —
out-of-state counsel and their behavior, I am
embarrassed.

I started my practice in California and I
practiced there in Los Angeles for five years before a
client actually asked me, in fact, paid my time to take
the Nevada state bar, frankly, because they were not —
after going to ten different law firms in the state of
Nevada, they were not getting their phone calls
returned, they were not getting the level of service
they were getting from my firm.

They literally asked me and paid me to take
the Nevada state bar and paid me to handle their
matters. We began practicing under the law firm of Leon
Mead, a partner of Gibbs Giden Locher & Turner.

We rented an office from a local attorney
here in Las Vegas and I was out here one day a week

whether I needed to be or not simply because we felt
that was what the requirement was.

We needed to have someplace where we could
get the documents that were served on us, and we
instituted a fax — not fax, but a Federal Express
system where every day whatever came into that
particular office, if I wasn't in town, was Fed Ex'd to
me directly and we dealt with it. That was in 1996.

Within two years I was finding I was giving
all of my California work to associates in my California
office and I was spending a hundred percent of my time
on Nevada matters.

Shortly thereafter, in 1998, we decided to
move here permanently and opened the office, and that's
when I moved here. I am a resident of the state of
Nevada and I consider myself for all intents and
purposes a Nevada attorney.

I will tell you that I don't like California
lawyers. I don't like dealing with them. I didn't like
dealing with them when I was in California, and
discovery matters that Commissioner Biggar was talking
about is routine, is a war.

And one of the most pleasant things I found
about being here was the professionalism and integrity
of the bar of the state of Nevada. And so when I moved

here, I told my partners very deliberately that we were
going to be Nevada attorneys and we were not going to
open a storefront as you will, and we have tried very
hard to make sure of that.

We now employ — well, we only employ three
Nevada attorneys, myself included, here locally. Two of
my partners are admitted in the state of Nevada although
based in California.

I can tell you the concerns raised by the
various members here about who handles those matters, I
assure you that I handle every matter and I am aware of
every matter that comes through our office. Whether it
originates with one of my partners in California as one
of their long-term clients, those matters were referred
to me and I deal with them and I am responsible to the
state bar and to the courts here over those matters, and
that is the way we deal with it.

We do not have a problem where out-of-state
counsel are working on matters, although I will tell you
I do use my associates and paralegals in California to
draft interrogatories and motions, however, every one of
those motions is sent to me and a lawyer in my office
here in Nevada comes to court and deals with those
matters and only because they know what's going on.

We do have once in a while where we have an
occasion to bring someone in pro hac vice. Sometimes we
needed the added horsepower as well.

I can tell you, though, we suffer from a
business standpoint by rule 199. We are not able to
have Gibbs Locher & Turner's name in any advertising
here and we do suffer.

We are a very boutique firm. We do
construction law only, and I've written books on
California mechanics lien law and Nevada mechanics lien
law, and that's really all we do, is mechanics law.

We have a national reputation. We have 45
attorneys who are dedicated to nothing but construction
law and are the biggest construction law boutique firm
west of the Mississippi River. That brings a large
amount of experience and a certain amount of trade name
recognition, if you will, to Gibbs Locher Turner across
the nation.

I have been with that firm for 13 years and I
bring a lot of that experience to me with the residents
of the state of Nevada, and that's what we came here to
do, to provide the residents of the state of Nevada with
what we believe is our expertise in construction area
law, and I think we've been successful here doing that.

So that's my position.

I welcome the questions, because I do have
Page 89

(1) opinions.
(2) CHAIRMAN WILSON: We have a question.
(3) JUSTICE BECKER: Actually two questions.
(4) You've heard our concern about -- or my concern that the Nevada client knows precisely what they're doing, and so how do we make sure that they're properly advised that the situation occurs?
(5) And, secondly, how do we regulate? Because quite frequently when you tell me you're here one day a week, that's exactly what I don't want.
(6) MR. MEAD: I know.
(7) JUSTICE BECKER: That's your firm.
(8) MR. MEAD: That was what I was here in the very beginning.
(9) JUSTICE BECKER: That is what we want to make sure does not continue, regardless of whether you're licensed to practice in Nevada or not. That's not what we want.
(10) MR. MEAD: Absolutely. The only reason we were at that level is because we had very few clients.
(11) JUSTICE BECKER: I don't care. You didn't want to put in the time and effort and take a business loss on the Nevada branch on the risk that you would get more Nevada clients?
(12) MR. MEAD: No, it wasn't at that point we didn't want to take the business loss. We were willing to do it. We need to allocate --
(13) JUSTICE BECKER: Why didn't you hire a Nevada attorney and open up the office and do all of those things instead of just having you be here once a month to pick up whatever you had from the local attorney who was fronting from you?
(14) MR. MEAD: That's not how we handled it. It wasn't a front. It was never that way. I was certainly aware of it. We did it for a business reason. We were planning to expand this office.
(15) CHAIRMAN WILSON: What would the rule be?
(16) MR. MEAD: You asked me two questions. The first one is I think the rule should be that a Nevada licensed attorney, okay, is responsible for the work and that the firm submit to the jurisdiction of the state bar.
(17) I know that my partners and I would have no problem in submitting to the jurisdiction of the state bar and in fact we do because --
(18) CHAIRMAN WILSON: How would the rule ensure that the Nevada lawyer be in fact responsible for the work?
(19) You testified that you came up here once a week and you had a hands-on control administering the work of the Nevada office and responsive to the Nevada clients, but how would you write the rule to require that a Nevada lawyer in Nevada be responsible for the work and actually be hands-on as opposed to being passive and being a facility for a California lawyer who never sees the client, actually is responsible for the work product of the decisions made in the case?
(20) MR. MEAD: Let me back up one second.
(21) I will answer that question along with Justice Becker's first question, which was how does the client know who is going to handle it.
(22) CHAIRMAN WILSON: I'm not asking you to describe what you do. I'm asking you the harder question, and that is how would you write and articulate the rule.
(23) MR. MEAD: I understand.
(24) First of all, I would demand or require the rule to say there would be a disclosure to the client as to who exactly will be handling their case and that person be a Nevada lawyer and be fully prepared to handle it.
(25) That's how we do it. We disclose in our retainer agreement that I am going to handle a case as opposed to Ken Gibbs or one of the other partners who are not there.

Page 90

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Page 91

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Page 93

1. responsible for every activity that occurs in the case, and if they were not, if you run into a situation where like Mr. Galatz' practice PI — and I do construction, so we don’t run into each other — what I would say is to address that particular issue, that could be an indication, okay, of a storefront and open — and an indication of an investigation if somebody's aiding or abetting in the unauthorized practice of law or whether or not it is a legitimate law practice.

CHAIRMAN WILSON: Should the lawyers in the California practice of your firm be registered, be required to register with the state bar as California lawyers licensed in Nevada, but a member of a firm that has an office in Nevada, as participating in the work of a Nevada office?

MR. MEAD: I don’t know if an individual attorney, but I think certainly the law firm should register and subject to discipline.

CHAIRMAN WILSON: That part is easy. I’m asking the tougher question, and that is I mean you say that the Nevada lawyer should be responsible and yet certain work, certain decisions are done by the California office by that firm.

MR. MEAD: No, I’m not saying certain decisions are handled by the California law firm.

Page 94

1. CHAIRMAN WILSON: How do you prevent that from happening?

MR. MEAD: You make the Nevada resident attorney responsible and obligated to be responsible for the decisions that are made.

CHAIRMAN WILSON: I guess the question I'm asking is whether the concept of responsibility is in the abstract or whether it has practical application on the ground.

Sure, it's easy to say, well, the Nevada lawyer is going to be responsible for whatever the work product is, whatever work is done, whether it's done in California, whether it's done by a California lawyer who has never met the Nevada client, whether it's done by a law clerk in the California office.

How do you provide as a matter of rule for accountability? It's easy to say the Nevada lawyer is responsible. That doesn't prevent the storefront operation.

MR. MEAD: I'm not sure in any — no matter what rule you create.

CHAIRMAN WILSON: The storefront operation is inherently dishonest going in as a matter of definition.

MR. MEAD: I think I agree with you.

CHAIRMAN WILSON: How do we prevent that and allow it? If that's to be the policy of this state, assuming for the sake of discussion that we permit under 199 the practice in Nevada, the multistate firm, how do you provide as a matter of rule for accountability?

MR. MEAD: I think that you do it as saying the Nevada attorneys are obligated to be responsible. I mean no matter — it's difficult to say as a matter of rule how would you stop it.

We have rules that say you can't murder people, but people get murdered every day.

That's what you have to do. You have to create a mechanism where a Nevada attorney has the ultimate responsibility and responsibility to the client and to the state bar for any matters that that firm handles in the state of Nevada and for those clients.

You do that as a matter of rule saying they must be. If you find out later that they are not doing that or there is some problem, then you have a mechanism to discipline that lawyer and discipline the law firm as well.

MS. STURMAN: Questions?

MS. PISCEVICH: Are your dealings primarily litigation dealings or are you talking transactional?

MR. MEAD: No. Litigation dealings, not transactional dealings.

Page 95

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Page 96

1. CHAIRMAN WILSON: Questions?

MS. STURMAN: Yes. If Mr. Galatz is finished, I wanted to follow up on pro hac vice.

I guess one concern I have and why I'm kind of interested in Mr. Wilson's suggestion, I guess a concern I would have even though you're here and you have other attorneys here and they're actually two attorneys in California who are also Nevada attorneys, I guess my concern would be there's 40 other attorneys in the transactional arena to be able to comment on how it would function.

MR. GALATZ: Could you live with words to which a local office must be retained which is actual, functional and staffed?

MR. MEAD: Yes, sir.

MS. STURMAN: Yes. If Mr. Galatz is finished, I wanted to follow up on pro hac vice.

I guess one concern I have and why I'm kind of interested in Mr. Wilson's suggestion, I guess a concern I would have even though you're here and you have other attorneys here and they're actually two attorneys in California who are also Nevada attorneys, I guess my concern would be there's 40 other attorneys in your firm.

What's to stop all those other 40 people to practice law here with you as your associate lawyer?

MR. MEAD: I don't think you can do that. We have rules that limit the number of pro hac vice.

MS. STURMAN: That rule is effective and works?

MR. MEAD: Certainly. We do not do that.
When we opened the Nevada office, it was my understanding it was going to be a separate, functioning, full-operating office. We don't handle that. And when I say that I use somebody in that office to help me, it's really sort of I don't have enough horses. But, no, I — I think it would be acceptable to allow somebody to a certain number of degree to do pro hac vice.

MS. STURMAN: It shouldn't be prohibited?

MR. MEAD: No.

MS. STURMAN: It should be allowed and regulated?

MR. MEAD: Yes, in a certain situation. I have no problem with that.

One other comment, if I can make it. Where we are functioning right now, the state bar has asked us to use the name of Mead Salamone & Sofen affiliated with Lewis Gibbs Locher & Turner. It is actually a misnomer. They actually told us we should not practice under the name Mead Salamone & Sofen. partners of Gibbs Locher & Turner. We are partners of Gibbs Locher & Turner.

To have the state bar tell us that's how we should operate to me is more misleading than the affiliated names and, frankly, vitiates the purpose of rule 199.

HON. HARDESTY: Do you advocate ABA 77.1, and, if so, what's your view about the use of trade names?

MR. MEAD: I would advocate 7.1 frankly. The use of trade names, frankly, I don't like the use of trade names for law firms. Whether or not that combination on commercial speech or not, I don't have an opinion. However, I don't really — as a profession I don't think it's great to have Joe's Bankruptcy Shop as the name of a law firm.

We are a profession, and, you know, that somewhat in my personal view demean the practice of law.

CHAIRMAN WILSON: Any other questions?

Thank you very much.

MR. MEAD: Thank you.

CHAIRMAN WILSON: Anthony DeMint.

MR. DE MINT: I'm not going to take a lot of time. I'm primarily going to speak to the transactional side, not the practice in front of a court of law.

I'm not an attorney. One comment from the gentleman who didn't like California attorneys, I think all attorneys are just tools for business people to do transactions and business.

CHAIRMAN WILSON: Your business is what?

MR. DE MINT: I'm an entrepreneur by definition. I guess a start-up company. I start a lot of public companies. I do a lot of merger and acquisition work, a lot of transactions, buy businesses, sell businesses.

One thing I have experienced is wherever I go I need an attorney to opine on the laws that I'm doing, but most of it is federal securities work.

Similar to bankruptcy or other specialties, I think California does recognize bankruptcy and different type of attorneys as specialists. I don't think the Nevada bar should have a problem with recognizing specialists and in the context of not practicing in front of the court of law should have a problem with other attorneys from out of state coming in.

I think you run into a problem with it in front of the courts, but I don't think having counsel that has a good background, good education and good experience, which I think is a very good key, the experience side of it, allowing them to sign off of a document, if I enter into an acquisition agreement, that if he is not licensed in Nevada that he should not be able to draw up that contract for me.

I think that's inhibiting a business. If I find an attorney that I like, a law firm that I like and enjoy doing business with and I go to Florida to do business, I shouldn't be able to call them and say I need an acquisition agreement?

CHAIRMAN WILSON: Ms. Sturman.

MS. STURMAN: Mr. DeMint, may I ask if you do that, if you have a good Florida attorney you want to use here, say he gives you bad advice in Nevada on a Nevada transaction, who would you expect you would be able to complain to about that attorney?

Would you expect Florida would act if he had done something unethical or the Nevada state bar office if he had a complaint? In other words, you as a client, where would you think you could go?

MR. DE MINT: Since I'm a resident in Nevada, I would probably seek Nevada, you know, disciplinary action on that, because I would be primarily acting on my behalf out of Nevada.

MS. STURMAN: I think you're probably right. I guess my problem with that is I'm not sure we would have the authority to discipline that problem.

Furthermore, if we did, the state of Florida would recognize it. So I guess that's the bigger question for us, how do we protect you?
MR. DE MINT: One thing that I would suggest is maybe allowing for a registration process, a fee process which would be income to the state of Nevada and also a tenure or a practice requirement of somebody practicing for five years without disciplinary action by the state that they're coming from, so when they come and they draw something for Nevada, they register and pay the fee, that grants Nevada jurisdiction over that individual attorney.

That's basically all the comments I would like to say quickly and just move on with it.

HON. HARDESTY: Excuse me, Mr. DeMint. Just one other question I had of you.

Suppose the attorney from Florida opined the Nevada corporation was valid and correct and so forth and that later turned out not to be true and it might have upset your offering, cost you money. Would you assume that you would be able to sue that lawyer for malpractice?

MR. DE MINT: I would assume, yes.

HON. HARDESTY: And would you have any concern that the malpractice policy might contain an exception that wouldn't cover it because the lawyer wasn't properly in Nevada?

MR. DE MINT: As a business person I would think it would be under my due diligence, if I'm really worried about an attorney's ability, to opine under Nevada law to check his insurance and other things and to make a business decision on whether or not I'm willing to make that risk.

It depends on, I guess, the time and the amount of business you do with that attorney. I think if I was to engage a new attorney, I would definitely look at that if it was a transaction that warranted it.

I think business people are in general smart people. I think attorneys are there to help, sometimes they hinder. And if it's a bad opinion on a transaction and you didn't do it, well, shame on me. I'll look at it the next time.

And I think the attorney should pay for that as well. Maybe that's where the regulation part comes in. I don't think you're going to cure everything by putting in rules. I think there's got to be some post-disciplinary actions put into place and some stiff penalties amounts, and maybe that comes into having practiced for five, ten years before you can go into another jurisdiction without taking the bar.

And I think that that needs to be when you don't have a problem and there's no -- you know, if I got burned by an attorney and I file a disciplinary action, maybe it's with the state bar of Nevada, and they say no, you have to go to Florida, if I go to Florida, then they shouldn't be allowed for him to go to Nevada.

I think good attorneys should not be penalized.

CHAIRMAN WILSON: Thank you.

Kevin Stolworthy.

David Amesbury.

Jared Shafer.

MR. SHAFER: Good morning, Mr. Chairman. Ladies and gentlemen. My name is Jared Shafer. I am the Clark County Public Administrator, have been for 22 years. At the same time I spent 20 years as a part-time public guardian.

Everyone in this room who has spoken is sophisticated. I'm not a lawyer, by the way. Nobody has discussed the average person. I work in the area of guardianship and probates. It's very narrow. But these are the people who will be taken advantage of if you allow out-of-state lawyers to hit and run, practice and go.

We see a lot of this in the newspapers,
Page 105

1. Securities & Exchange Commission lawyer who wants to come back and do securities and exchange work type stuff, he can get licensed.

2. If we have PI people that want to come in and do PI work only, they can get licensed in that small area, and that could help. You want to do criminal work, you want to do appeals work, that stuff would help, I believe.

3. But the little guy is not going to ask these questions. And if you just allow anyone to come in, do a case, leave, I'm going to be fixing it. And I don't like fixing cases constantly.

4. I think it's bad enough locally. I think we need to keep people licensed. Foreign lawyers want to come in, there must be a reason. Why are people leaving Arizona? Why are people leaving California? This state offers a wonderful climate to bring business to and it's going to get better.

5. By the way, I don't care about rule 199 and what we call a law firm. I leave that up to the experts. I don't quite understand because I talked to a lawyer. I talk to Mark Solomon. I don't talk to Lionel, Sayre & Collins. I know who my lawyer is. I talk to Patty Trent. She's a sole practitioner. I don't worry about the name on the door.

Page 106

1. don't think most people think in those terms of who the name on the door is, Lionel Sayre & Collins. They know who they're dealing with. If it gets passed down, then they have problems.

2. That's my feelings and I think that's the general feeling of the public, people who aren't represented here today.

3. I'll entertain any questions and say thank you.

4. CHAIRMAN WILSON: Are you saying that the problems you've had been caused by Nevada lawyers who are not competent or out-of-state lawyers who aren't admitted to practice here who also are not competent?

5. MR. SHAFER: How much trouble can I get myself into?

6. The problems I run into are by people who practice a portion of law that they don't understand.

7. The problem with out-of-state lawyers, I can't get an out-of-state lawyer to perform the work we need within the time constraints.

8. I have had to deal with the IRS because of someone who passed away. On a 706 you have nine months to file, we can close a case. I don't care how many millions of dollars it is, a good lawyer can close — I did a 30 million dollar probate and we did it just at 24 months.

Page 107

1. and a half months. It does not need to take forever.

2. CHAIRMAN WILSON: So all of this is subject to in effect the jurisdiction of the probate court?

3. MR. SHAFER: What I do is, yes.

4. CHAIRMAN WILSON: And the lawyers who cause these problems for your clients, their work also is before the jurisdiction of the probate court?

5. MR. SHAFER: Some of it isn't.

6. What happens, I have lawyers out of state representing heirs or beneficiaries. My lawyers can't talk to the heirs and beneficiaries. I can. We try to get them to comply with us. Social Security number, the simplest thing.

7. CHAIRMAN WILSON: Should they be qualified to have Nevada counsel?

8. MR. SHAFER: No. The probate can hire them for heirs that weren't here. That's not the problem.

9. The fact is we have lawyers from out of state who don't comply. I don't want to see — that's what they're doing, by the way. People coming into Nevada, I speak a lot to seniors: I have a will drawn in New York. Is it good? Yes, it's good in Nevada. Have you reviewed it lately? Well, I'm going to call my lawyer in New York and have him take a look at it. When did you write it? 21 years ago. And they're still going to use the same lawyer but they're living in Henderson or Green Valley.

10. Then what's worse is I get them after they passed away and the son calls me from New York and says: My lawyer in New York is going to handle it. I hate to tell you, sir, no, he's not.

11. If you allow them to just come in and hit a case and go, there's got to be controls. Easiest place to rip somebody off. You make the mistake, you cover it.

12. CHAIRMAN WILSON: Judge Hardesty.

13. HON. HARDESTY: I don't believe I've ever seen a Supreme Court rule 42 application in a probate proceeding. Is that something we should consider?

14. MR. SHAFER: You're going to have to explain rule 42.

15. HON. HARDESTY: Do you think that the lawyer representing the heirs should submit to the jurisdiction of the court in a formal application process much the same way?

16. I did some — a lot of probate and trust work before I became a judge, and you're right. There are a tremendous number of situations in which lawyers are representing heirs, they're on the fringe of the probate proceeding that are actively involved in the process.

17. MR. SHAFER: Your Honor, from my own
perspective I don't think that matters. I'm so aggressive that they don't bother me too much. From the general person, if you had a son or daughter probably that's doing the estate for mom and the lawyer is in the East representing the other kids, it might not be a bad idea, but I don't know how you can enforce it. He is not truly representing them in front of the court. He's just covering their bases and answering the questions.

HON. HARDESTY: But what's happening is the lawyer in New York or Utah or wherever is drafting the petitions and so forth and they're being filed pro per by any number of people and there's a tremendous amount of legal advice taking place in the probate administration where the executor is acting on their own with the advice of out-of-state counsel. Isn't that true?

MR. SCHAFER: That's true.

CHAIRMAN WILSON: You don't have a magic answer?

MR. SCHAFER: You license them all if you practice in Nevada. My magic answer is have everyone certified in specialties.

CHAIRMAN WILSON: You don't have a magic answer for us. Okay.

Michael Ryan.
Michael Ryan.
Richard Small.
Richard Small.
Michael Small.
Michael Small.
Berna Rhodes-Ford.
I have no comment, but I just want to clarify for the record that the name of my firm is Hicks & Waits.

CHAIRMAN WILSON: Kym Cushing.

MR. CUSHING: Good morning. My name is Kym Cushing. I am a member of the Nevada law firm of Edwards Hale Sturman Atkin & Cushing. Gloria Sturman is my partner and we have an office here in Las Vegas. My comments are directed to two particular areas, both are practical in nature. My experience of working with out-of-state lawyers, I have been here for ten years. I'm a partner.

I can tell you I have practiced with out-of-state lawyers on a number of cases and I usually get a P.O. Box, I usually get a 1-800 number. I don't know who I'm talking to half the time. I get out-of-state counsel or staff. It is very difficult to work with out-of-state counsel.

When you try and schedule a deposition, it's difficult. When you try and arrange court hearings with out-of-state counsel, you have to work around their flight schedules.

I live here. I work with Nevada lawyers. It's not difficult if they're here in the state of Nevada.

In my experience out-of-state counsel don't know the Nevada state rules by which we follow. They don't understand our two-year statute of limitations for a personal injury case. They don't understand Commissioner Biggar's decisions on discovery matters. I can tell you I have had many times when I have been working with out-of-state counsel in Chicago or New York by phone who tell me: Don't produce this. Don't produce that. And they hang up the phone. That's an easy thing to do.

Guess who has to go and meet Commissioner Biggar and make an asinine argument in front of him and guess who gets sanctioned? The local Nevada attorney.

It's easy for these people to live out of state just to blanketly tell you don't produce this or that.

CHAIRMAN WILSON: These people are admitted pro hac?

MR. CUSHING: Some of them are and some of them aren't. In regard to the pro hac vice, yes, especially when they're case specific.

I've also included in my comments for out-of-state claims people. I have a case right now where I'm working with a Chicago law firm and they don't understand Nevada rules at all. They don't why it takes so long to get cases to trial. They don't understand Commissioner Biggar, but I tell you, if they're pro hac vice, we have marching orders. We're on the front line and we get sanctioned and our law firm's reputation is at risk.

JUSTICE BECKER: Perhaps you don't want to be local counsel for these people.

MR. CUSHING: Believe me, that has been discussed.

The reason out-of-state lawyers are interested in Nevada, the business is here. The California lawyers have saturated the market on construction defect. This is our potential business. We're all lawyers in the state of Nevada. We should be worried about our business. They are taking away our business.

We live here. We raise our families here. We pay Nevada taxes. We have Nevada business licenses. We're licensed in the state of Nevada. And these
Page 113

out-of-state lawyers, they take away our business. My firm has lost business because of
  situations.
Why make it difficult for out-of-state lawyers? If they want to practice here, they should
move here, they should live here, they should work here. They should have an actual office in the state of
Nevada. There should be a residency requirement of, I think, at least a year so they can start understanding
some of our judges and our rules. They should be licensed here. They should have a Nevada business
license. They should have a Nevada staff. And the work that is done by these lawyers should be done in Nevada
by Nevada lawyers.

Unless there's other questions that's all I have.

CHAIRMAN WILSON: On construction defect litigation, how is it that — what would you recommend
that the rule should be with respect to — these are all
admitted on pro hac?

MR. CUSHING: Or they will come out here and
open up a P.O. box, have some sort of sham office and
get admitted or maybe have a couple of attorneys take
the Nevada bar, make appearances out here and then all
the work is done in San Diego, for example.

That's how most of it happens, especially in
the construction defect arena.

CHAIRMAN WILSON: What should the rule be to
address that situation?

MR. CUSHING: I think they should have a
office here, No. 1, and that the work be done here and
that the Nevada lawyer be responsible.

I don't know how you can draft a rule, but
there should be someone in Nevada who is here five days
a week during normal business hours that you can call
for a problem, not someone with a 1-800 number in Contra
Costa County. They should be here and have a Nevada
license. There is no way you can stop someone from
coming to Nevada.

CHAIRMAN WILSON: You're saying there's a
substantial problem here, especially in the area of
construction defect —

MR. CUSHING: In construction defect,
asbestos, breast implant litigation.

Insurance defense is one of our biggest
issues. A lot of these insurance companies are hiring
in-house counsel, but the in-house counsel are not from
Nevada. What they do, they send someone out here to
take the Nevada bar. Then all the work is done out of

Page 114

Page 115

state, and for court appearances they fly them in, and
that's from firsthand experience. I won't tell you the
insurance company, but it's a reality.

CHAIRMAN WILSON: You're making two points.

With respect to construction defect, you're saying there
is a substantial amount of activity by out-of-state lawyers who may open a Nevada office. It's pro forma.
It's not really a substantive office. It's a location, address, maybe a Nevada lawyer, but really the practice
is in California?

MR. CUSHING: Absolutely, especially southern California. There is a proliferation of southern
California law firms that have infiltrated the state of
California especially in the construction defect area
and you can ask any construction defect firm in town and
they will corroborate that.

CHAIRMAN WILSON: What was the comment you
made a moment ago about in-house counsel?

MR. CUSHING: Certain insurance companies
don't like in-house attorneys because they're too
expensive and sometimes they don't tell them what they
don't want to know.

Say, for example, insurance company X, they
hire their own attorneys and insurance company X is in
San Francisco. They will — but there is a claim in

Page 116

Nevada. But the claim doesn't really come to Nevada.
It goes to the San Francisco attorney's office who is
affiliated with insurance company X. They say, oh, we
got a claim in Nevada. Let's get someone out to Nevada,
get someone licensed, and they use that as a pretext and
they handle the claims in San Francisco, and wherever
there is a court appearance, you don't know who you're
going to get, but someone comes from San Francisco and
makes the court appearance, but all substantive work is
done out of state, and I know it's not a Nevada lawyer.

CHAIRMAN WILSON: You have a Nevada lawyer
who is licensed, but just the name on the license is
used?

MR. CUSHING: Absolutely, and it happens.

MR. TURNER: What about the complaint that if
he heard over a number of years that we simply don't —
I'll raise this issue again with you. We don't have
sufficient expertise with Nevada law firms to do a
certain type of specialty work, nor horsepower, and
clients complaining when they went to Nevada, they were
given short shrift, not given proper representation, and
very much more comfortable with out-of-state lawyers.

MR. CUSHING: I tell them tough luck because
they never gave us a chance.

MR. TURNER: I'm talking about where the
MR. GALATZ: Maybe the rule is there should be some obligation on the part of a Nevada lawyer to call in the specialist when needed. I called in Saulie Robbins' firm on the foam fire litigation case. As a matter of fact, I'm dealing with them on a drug problem.

So maybe the shoe is not so much necessarily entirely on the out of state, but perhaps part of what we need to do is say when you have a local lawyer involved — we've got a business client I've represented for 40 years. We work regularly with the San Diego firm out-of-state counsel would be expected to bill the client, get paid by the client, but under that decision wouldn't necessarily get paid by the client, that the fees would not be recoverable.

MR. GALATZ: That may be true. There are a lot of good firms in this town and we all learn by experience. If client Z had a problem with one particular law firm, that's unfortunate, but that shouldn't reflect on everyone else. Give us the chance to learn. We all went to law school. We're not experts in everything. But I can tell you one thing, we can sure learn quickly.

MR. GALATZ: Don't you think the client would be better served?

MR. CUSHING: Perhaps. This is Nevada. If you're here, play their game, play their rules.

MR. TURNER: That's what we're trying to determine, what are the rules.

MR. GALATZ: I always figured out a way to protect my fees.

MR. GALATZ: I agree with you. I think you don't disagree with anything the prior speakers said to equally to him as well.

MR. GALATZ: First of all, let me start out by saying I don't disagree with anything the prior speakers said to you about out-of-state counsel, particularly in the area of construction defect litigation practicing here in Nevada.

Before I get to my substantive comments, I'll tell you a little bit our firm and tell you we are not one of those firms. Ryder & Caspino was opened up here in Las Vegas approximately four years ago by Rob Ryder and Mike Caspino, who are partners in the California firm of Brady Boric & Ryder.

Brady Boric & Ryder has approximately 35 to 40 lawyers in Orange, California. We have an office in Walnut Creek, California, which has half a dozen lawyers, and we just opened an office in Scottsdale, Arizona, which currently has two attorneys.

Ryder & Caspino has about a dozen — actually exactly a dozen Nevada-licensed attorneys, and we have two other individuals who are clerking with us who took the recent exam here in Nevada in July.

This firm Ryder & Caspino was opened up by Bob Ryder and Mike Caspino approximately four years ago, and we did it the right way. What they did was immediately hire one Nevada licensed attorney and shortly after that two additional Nevada licensed attorneys who only practiced here in Las Vegas and in Nevada.

Now, for the first two years Rob and Mike were traveling back and forth between Las Vegas and Orange, and, thankfully, that has decreased as time has progressed.

We do not have any of the lawyers in California who are not licensed in Nevada handle any of the Nevada work. We have three attorneys who are
MR. SIMMONS: Yes, sir. Because we've done it the right way, we have experienced slower growth than we would have expected. And because of that we have not done that, and because of the shortage of qualified attorneys here in Nevada we have, unfortunately, growing slower than we would have liked. But that's the price that we pay and we're bound and determined to do it the right way.

Our biggest concern is the firm name issue, and that is we would like to use the name Brady Boric & Ryder in all four offices. We're allowed to do that in Arizona. We're not allowed to do that here.

The reasons why we would like to do that were set forth in a written submission that you all may have, and I don't want to belabor our selfish reasons why.

I would like to address a solution instead, and that is what rules or guidelines can be put in place to protect Nevada citizens, Nevada businesses who could potentially be misled in believing that someone could handle their file who can't.

The first thing is fairly obvious. In the firm letterhead all firms need to be very specific in listing any person's name that appears on the letterhead.

This is 100 percent a Nevada law firm.

CHAIRMAN WILSON: You're saying all work done by your — for all your Nevada clients, the work is done by your Nevada lawyers?

MR. SIMMONS: We have three attorneys who are licensed both in California and here, and sometimes those attorneys handle certain aspects of the Nevada cases and sometimes have to fly here and cover some appearances.

One of them actually was primarily responsible for trying the latest construction defect case which was recently tried to verdict by Judge Douglas a few months ago.

We don't have any of the California license attorneys at any of our offices who are not licensed here handle any aspects of our cases.

CHAIRMAN WILSON: So you recommend that the rule be that lawyers who handle or participate in the handling of Nevada cases be licensed Nevada lawyers?

MR. SIMMONS: I'm not specifically here to advocate that position, but I would not take an issue.

That's my personal feeling.

CHAIRMAN WILSON: Certainly they were in your Nevada office, but also if they were in an office in California or some other city?
COMMISSION ON MULTIJURISDICTIONAL PRACTICE PUBLIC HEARING
FRIDAY, SEPTEMBER 28, 2001

MR. FERENBACH: Good morning.

CHAIRMAN WILSON: Good morning.

MR. FERENBACH: Actually the testimony has been quite interesting. And I'm not the president of the Clark County Bar Association as noted. I'm sure as you're aware one of your members is the president. I'm the president elect, but will assume the duties next year, and, you know, as I look at the makeup of the committee, I mean so many of you have been in the local bar that I really think any one of you could sit down here and say the same thing that I'm getting ready to say.

I hope you had a chance to read my written testimony. I don't plan to go through that. I do think if I could just comment for a minute on personal experience on the benefit I think to the public, to our government and to ourselves as professionals having a cohesive local bar association where you're not just responsible to the judge or the client, but your reputation in the community is on the line every time you pick up the phone, every time you make an argument.

I had an experience in the early '80s. There was a lot of articles in the bar publications about hardball litigation and there were law firms that came into this state in big cases which I was involved in and

Page 125

(1) required for us in order for us to achieve that, then
(2) that's what we suggest.
(3) CHAIRMAN WILSON: I'm assuming you're
(4) suggesting it not just as a condition of using your
(5) name, but because you have a multistate practice, you
(6) recommend that be the policy and the rule?
(7) MR. SIMMONS: I would recommend that that be
(8) part of the rule.
(9) CHAIRMAN WILSON: I didn't mean to interrupt
(10) you. Go ahead.
(11) MR. SIMMONS: First of all, I should say I
(12) echo a lot of sentiments that have been advocated here
(13) earlier today. There are a lot of law firms - we do
(14) all civil litigation. We do a lot of insurance defense
(15) and a lot of construction defense. There are a lot of
(16) law firms representing subcontractors and developers and
(17) plaintiffs that are no more than a front here in Nevada
(18) and it is difficult for us to deal with them as well.
(19) And so because of that, if stringent
(20) requirements are put in place, we are willing to abide
(21) by those. But the primary reason why I'm here today is
(22) addressing the issue of using the same law firm name
(23) that we have in California here in Nevada.
(24) CHAIRMAN WILSON: Any questions?
(25) HON. HARDESTY: Do you support ABA 7.1 and

Page 126

(1) what's your view on trade names?
(2) MR. SIMMONS: I don't really have a view on
(3) that. I guess I'll give you an off the cuff. I'm not
(4) really in favor of that. I think it demeans the
(5) profession, and I think it may to some extent mislead
(6) potential clients where they would not know exactly who
(7) is representing them.
(8) That's just a personal view on my part.
(9) MR. GALATZ: Do you have any problem with
(10) registering your firm name but indicating on the
(11) letterhead that member X, Y and Z are not members of the
(12) Nevada bar?
(13) MR. SIMMONS: Absolutely not.
(14) MR. GALATZ: Do you see any distinction
(15) between using a firm name of persons without partners
(16) and a firm name with deceased partners?
(17) To me it's the same thing. I think this firm
(18) name thing has gotten out of hand is my own reaction. I
(19) don't really care as long as we identify the deceased
(20) partner and not a member of this bar. That's my own
(21) personal feeling.
(22) MR. SIMMONS: I don't disagree with you.
(23) CHAIRMAN WILSON: Any other questions?
(24) Thank you, Mr. Simmons.
(25) Cam Ferenbach.

Page 127

(1) I have one in particular in mind that put out firm
(2) brochures and it said: Litigating with Firm XYZ is like
(3) meeting Gingus Kahn on the steps. I'm sure many of you
(4) may remember who that firm was.
(5) Now, we were in federal court on that case,
(6) and our federal judges I think all of us know really
(7) support civility in litigation, and I've heard federal
(8) judges take to task people who draft pleadings that say
(9) things like: Whoever wrote this obviously didn't go to
(10) law school. The person who made this argument obviously
doesn't understand what's going on in this case.
(11) They'll say: Ms. X or Mr. X, do you think
(12) that really helps me in deciding a case to read what
(13) you're saying?
(14) But you know what? In a lot of jurisdictions
(15) those types of arguments are made routinely. And in
(16) fact in the early '80s in probably more oppositions to
(17) motions than not, there was a counter motion for rule 11
(18) sanctions. I think many of you will remember that.
(19) And, you know, it took a change in the rules
(20) by the federal courts to give that sort of opportunity
to cure that type thing, and that cut it down.
(21) But to my mind it was the judges who really,
(22) you know, took a hand in it and made it clear to the bar
(23) that, you know, certain levels of behavior were expected

Page 128

(1) required for us in order for us to achieve that, then
(2) that's what we suggest.
(3) CHAIRMAN WILSON: I'm assuming you're
(4) suggesting it not just as a condition of using your
(5) name, but because you have a multistate practice, you
(6) recommend that be the policy and the rule?
(7) MR. SIMMONS: I would recommend that that be
(8) part of the rule.
(9) CHAIRMAN WILSON: I didn't mean to interrupt
(10) you. Go ahead.
(11) MR. SIMMONS: First of all, I should say I
(12) echo a lot of sentiments that have been advocated here
(13) earlier today. There are a lot of law firms - we do
(14) all civil litigation. We do a lot of insurance defense
(15) and a lot of construction defense. There are a lot of
(16) law firms representing subcontractors and developers and
(17) plaintiffs that are no more than a front here in Nevada
(18) and it is difficult for us to deal with them as well.
(19) And so because of that, if stringent
(20) requirements are put in place, we are willing to abide
(21) by those. But the primary reason why I'm here today is
(22) addressing the issue of using the same law firm name
(23) that we have in California here in Nevada.
(24) CHAIRMAN WILSON: Any questions?
(25) HON. HARDESTY: Do you support ABA 7.1 and
Page 129

(1) in federal court, and they didn't do it by sanctioning
(2) and making money be paid or whatnot. They did it by
(3) personally calling the person on the table and saying:
(4) What are you thinking? Are you really helping me by
(5) litigating a case? After all, I'm sure all of you who
(6) are litigators know most cases settle, so does it really
(7) benefit the resolution of a case to be the hardball
(8) litigation, to be Gengus Kahn on the steps, creating
(9) hard feelings, making it harder and harder to settle a
(10) case? Obviously not.
(11) Now, to my mind a strong bar association
(12) really promotes the professional conduct, because as
(13) lawyers here — I mean I'm sure everybody has dealt with
(14) clients, you know: This is the most important case in
(15) my life. My business is on the line. I don't want to
(16) give an inch. I want you to fight for everything.
(17) You know it's our job to explain to them
(18) that's the way it's not resolved. That's not in your
(19) interest. LA Law, you watch that, you may think that's
(20) the way to do it or whatever these recent shows are.
(21) This is reality. This is Nevada. This is the way we
(22) practice law in Nevada,
(23) And I think we have a great bar locally here
(24) and up north, you know, where there is activity. Of
(25) course, the smaller counties — it was interesting at

Page 130

(1) the State Bar Access To Justice Committee meeting, you
(2) know, the smaller counties, they don't have these
(3) problems because there's just a handful of people. I
(4) mean they're dealing with each other every day. As
(5) counties grow that's where we have to work.
(6) And the practice has changed in 20 years that
(7) I've been practicing, but there have been a lot of good
(8) efforts by a lot of people, I think, to maintain the
(9) level of practice in this jurisdiction.
(10) And I just would suggest on behalf of the Bar
(11) Association and myself — I guess I should mention I'm a
(12) partner in Lionel Sawyer & Collins. I do have a
(13) position in the firm name, but I'm here for the county
(14) bar, but anyway I would just say keep that very
(15) important factor in mind.
(16) If you have attorneys coming in, as
(17) Mr. Shafer said, a hit and run attorney, attorneys that
(18) coming in for the client, they're not feeling any
(19) obligation to the state of Nevada, to the bar
(20) association, to the system of justice here. You know,
(21) it's going to have to take state bar discipline to keep
(22) those people in line. How sufficient is that? I mean
(23) that is so difficult.
(24) The way our system really works is that a
(25) professional standard is enforced, is set, and it's

Page 131

(1) enforced through the profession itself, not by sanctions
(2) coming down from an association.
(3) So I realize we have to deal with realities
(4) of globalization and the Internet and everything else.
(5) I just hope this commission can find a way to keep these
(6) concerns in mind.
(7) Thank you. Any questions?
(8) CHAIRMAN WILSON: Any questions?
(9) MS. STURMAN: Mr. Ferenbach, do you think
(10) that this is something that we don't through a rulemaking
(11) authority, but rather more through our local bar
(12) associations, working with our judiciary, need to
(13) encourage local attorneys and judges perhaps to the
(14) extent people are coming in and abusing the hospitality
(15) of the Nevada courts to be more proactive and really
(16) enforce the rules and pay attention to them rather than
(17) just constantly turning everything to bar counsel and
(18) maybe we need to handle these things ourselves?
(19) MR. FERENBACH: Yes, I understand that
(20) question. I would be more than happy to share those
(21) feelings with any judge at a bar association function,
(22) but while we're chatting on the record, I'm a little
(23) loath in testifying in open court saying that judges
(24) aren't doing their job. I think all the judges are
(25) doing the best they can.

Page 132

(1) MS. STURMAN: Of course they are.
(2) MR. FERENBACH: That's not implied in your
(3) question.
(4) CHAIRMAN WILSON: Notwithstanding that
(5) disclaimer.
(6) (Laughter)
(7) MR. FERENBACH: I think that's an important
(8) thing. I've certainly seen some judges, maybe the way
(9) they're organized, the workload, they have to set their
(10) priorities. Clearly if a judge, you know, makes — has
(11) a reputation of expecting a certain type of conduct in
(12) his or her court, the lawyers are going to conform to
(13) that because, you know, their fate is in the judge's
(14) hands.
(15) Again that's sort of a top down enforcement.
(16) I think sort of a bottom up thing through strong law is
(17) very important also.
(18) CHAIRMAN WILSON: Any others?
(19) Thank you very much.
(20) Bar counsel is here, Rob Bare.
(21) MR. BARE: Rob Bare, bar counsel at the State
(22) Bar of Nevada and sitting to my left is attorney Norman
(23) Kirshman, attorney here in Las Vegas.
(24) Chairman Wilson, members of the committee,
(25) you might recall that I talked with you extensively at
your last meeting that was held in Elko, and, of course, I'll respond to any questions you have of me here this afternoon - it's now this afternoon; I know it's been kind of a long day for you - but it's my understanding that recently the president of the state bar, John Mowbray, had occasion to talk with Norm Kirshman here and invited him to be present today.

And let me just give you a quick background on why Norm is here and perhaps would talk with you and entertain your questions today.

At the last meeting I told you that in fact there were a couple law firms, both firms from Arizona, sued me in my official capacity when I as bar counsel tried to enforce Supreme Court rule 199, and that matter is pending in federal court.

Now, Mr. Kirshman, well, he's my lawyer, he represents me in that litigation, and that's relevant, of course, to this commission because of the fact that a few months ago the State Bar of Nevada did file in the Supreme Court of Nevada a petition asking that Supreme Court rule 199 be amended in a certain way, and in that court's wisdom they have referred that specific issue, that is, the issue of what should happen regarding Supreme Court rule 199, to this commission, and I imagine - I'm sure this commission will recommend a recommendation to the Supreme Court. Hopefully that will set up what we're doing today with Mr. Kirshman.

MR. KIRSHMAN: As an advocate in a pending case, I really think it would be inappropriate for me to promote, to promote the arguments that we've made before the court in this forum.

I certainly am able to answer any questions about the status of the case. I can answer questions about the issues that have been raised in the case, but I think that if I were to speak as a Nevada lawyer asking or suggesting modifications in policy or giving policy reasons, that might be considered inappropriate by Judge Dawson who is sitting now on motions for summary judgment by the plaintiffs, motions to dismiss by Mr. Bare on various and sundry legal issues.

So I would - I would prefer to answer - or to decline to answer particular questions. CHAIRMAN WILSON: Let me put it this way, I don't know that you need to advocate here in this forum. You are the state bar position on any court. The question we have, which is different from that, is what should the rule be, what should the public or judicial policy be and why? Irrespective of that case and the issues that

case and what that court may determine, it seems to me you're fully capable and free to testify as to what the public or judicial policy ought to be and we need not - you don't have to argue a case here. We're talking about a subject matter independent of pending litigation.

MR. KIRSHMAN: With that invitation, I'm prepared to respond.

CHAIRMAN WILSON: Does that give you enough absolution to speak freely and honestly what the law ought to be?

MR. KIRSHMAN: Absolution is more than I can anticipate, but I do believe the concern -- the concerns that have been addressed in the petition to modify rule 199 are things that I can speak to. That's the petition filed by the start bar to modify rule 199 to incorporate or to formalize a practice that has arisen over the last several years of use of a firm name in affiliation with a firm of licensed Nevada lawyers.

Of course, that's unacceptable to the plaintiffs in the litigation, but my perception, my perception that the underlying concern that the Nevada Supreme Court should have is not so much the firm name, but whether -- whether nonlicensed lawyers employed by a state -- by a law firm where the firm name lawyers are not dead, but are alive and may be -- and the partners of that firm may be exercising the professional judgment that the Nevada Supreme Court rules demands of the Nevada licensee.

For example, a survey that we did -- and I would not go into names -- of a firm that would like to use its trade name -- and somehow that offends me, trade name. I would hope that we're somewhat above a trade. But they would like to use their trade name here in Nevada and employ in excess of 300 lawyers. Of the 300 lawyers approximately five or six are members of the Nevada bar. Three, four of them are in an affiliated office here in Nevada. The firm practices a broad range of disciplines, everything from soup to nuts in the business and commercial law fields. And I find it difficult to accept the proposition that the people hired in Nevada, licensed in Nevada, and the other four or five who are not physically in Nevada but have gone through the pain and suffering of the Nevada bar and are licensed in Nevada in many, many of the matters handled by that firm for a Nevada resident and businesses, I find it hard to accept the proposition that the ultimate judgments in the way those matters are handled are being made by the Nevada licensees.

And the proposed modification to rule 199
that the state bar submitted addresses that issue and
basically it says -- and I wouldn't have a problem, I
really wouldn't have a problem -- I think that the name
is not the most significant thing. It is the underlying
exercise of judgment by a firm that may have 6, 700
lawyers.

CHAIRMAN WILSON: Justice Becker.

JUSTICE BECKER: We heard some testimony
earlier today, Mr. Kirshman, about some suggested
concepts of how to deal with this. One was the concept
that you just talked about, that only the licensed
attorneys may be able to do the work on the case or the
unlicensed attorneys must be — or the licensed
attorneys must be the individuals who have control of
the case.

Some others have been disclosures, that is,
you have to disclose to the client exactly who is
working on the case and who is licensed and who isn't
licensed. Some things like that.

I want to let you know those are some of the
suggestions that have been made for allowing the use of
the firm name, but making it clear to the client
precisely who does the work and who has control of the
work.

MR. KIRSHMAN: I think those are very good

suggestions, but I think that — I think that who does
the work, who does the pick and shovel, who does the
research in my view is less important than who controls
the case; and if a — and I think that that's the essence of
the concern that I have in the context of the overall
scheme of Supreme Court rules as to the use of a firm
name and going behind the firm name and looking at who
controls, who exercises the judgment, what pressures
exist on a lawyer of five or six years experience when
the — when the partner in charge of the file is not a
Nevada lawyer.

And I know that that's cumbersome and I doubt
very much that the other 49 states have expressed
concerns or even tried to do anything about it,
because when I lived in Los Angeles and I practiced in
Los Angeles in the '80s, there was a proliferation of
national firms opening offices, branch offices, all
over the place, and what they generally did — and my
firm was approached at the time. We had about seven or
eight lawyers and we were courted and we were offered a
branch office under the name of the New York law firm;
and when I visited the firm in New York, it was made
very clear to me that in respect to certain types of
cases and certain types of litigation and certain types
of transactional matters, partner A, partner B, partner

C would be in charge, and that was the scenario
presented. And me being kind of crusty and used to not
taking orders too well, we never made a marriage.

But I think that's typical, that's typical
throughout the country. And those 49 states have
probably made a decision that given the quality of the
law schools today and given the quality of people that
they hire, admission to a particular state's bar is not
necessarily required or the most important thing, and
therein lies the question that our Supreme Court will
have to decide as to whether they feel to the contrary.

I hope I've answered your question.

HON. HARDESTY: Just to add to that, I think
it's important who controls the litigation. The pick
and shovel could actually benefit Nevada citizens where
firms have developed extensive research on a particular
subject matter. They can hold down billings and be
responsible for not rebilling research that has been
done before. Pattern interrogatories and some of the
things can actually benefit the Nevada citizens, don't
you think?

MR. KIRSHMAN: I agree. The pick and shovel
is in my opinion not the primary issue.

CHAIRMAN WILSON: So your — you in effect
would advocate that the Supreme Court's policy, whatever

rule it ultimately adopts with respect to
multijurisdictional law firm, that the ultimate
responsibility, the substantive responsibility for a
Nevada case be a Nevada admitted lawyer of that firm?

MR. KIRSHMAN: I would recommend that unless
our Supreme Court is willing to move away from —

CHAIRMAN WILSON: Our question is what to
recommend to the Supreme Court —

MR. KIRSHMAN: I understand.

CHAIRMAN WILSON: Our question is what should
we recommend as a matter of public policy, and your
suggestion is that the substantive responsibility for a
Nevada matter be required to be handled by a Nevada
admitted attorney of that multistate firm?

MR. KIRSHMAN: Yes.

CHAIRMAN WILSON: That applies obviously to
litigation matters?

MR. KIRSHMAN: I would think it would apply
with equal or greater force to transactional matters.

CHAIRMAN WILSON: That was going to be my
next question.

MR. KIRSHMAN: Sometimes the transactional
matters can dwarf what would be at stake, you know, in
run-of-the-mill litigation.

CHAIRMAN WILSON: And are there areas
requiring a level of technical expertise that might not
be satisfied by a Nevada lawyer?

MR. KIRSHMAN: Quite possibly.

CHAIRMAN WILSON: In that case what should
the rule be?

MR. KIRSHMAN: I think the rule should
require informed client consent, particularly matters of
patent litigation, literary property rights, SEC
transactions, all litigation where at this point in
time the expertise in a small legal community such as we
have may not pass muster, and it comes -- it happens
that some matter will come in and for whatever reason
the client wants the Nevada lawyer to take an active
role and the Nevada lawyer, mindful of his or her
ethics, tells the client that this is going to require
participation of someone with expertise that the firm
doesn't have, and it's been my practice to get the
client's informed consent to hire the expertise or in
some cases to take a secondary role and have the firm
with the real expertise take the lead, but the client
must know that.

CHAIRMAN WILSON: So the test would be not
whether the firm -- that particular law firm had a
lawyer of that expertise admitted to the Nevada bar; the
test would be whether or not the specialized field is
not one very common in Nevada at all and simply as a
practical matter is going to require somebody from out
of town, so to speak?

MR. KIRSHMAN: If that's the only place the
expertise can be obtained. Or if the client happens to
know independently of the law firm -- of the firm that's
had a remarkable record of success and wants that firm
involved and the association of a firm like that with
the client's consent, that the firm or the expertise
take the lead, I think that would relieve the Nevada
lawyer from any violation of the Supreme Court rule.

CHAIRMAN WILSON: That would be the caveat
and I think the mechanics of the law would require that
kind of consent be available and could be produced.
Okay. Any questions?

MR. KIRSHMAN: Thank you.

CHAIRMAN WILSON: Thank you very much.

Is there anybody else present today that
wants to offer testimony?

If not, we will close this hearing.

(Hearing adjourned at 12:34 p.m.)
ATTACHMENT D

TRANSCRIPT OF PUBLIC HEARING
OCTOBER 3, 2001
RENO
Reno, Nevada: Wednesday, October 3, 2001: 9:00 a.m.

MR. WILSON: Why don't we get started. It's a bit after 9:00. As you all know, we're here for the Supreme Court Commission on multijurisdictional practice, take comment and have some discussion and try and get some insight and guidance and inspiration to ultimately collect the comments and present a report to the Supreme Court of some value. We hope.

But let me ask each of the panel members to introduce themselves. I'm Spike Wilson, I was asked to chair the committee. And if everybody on the panel will please introduce themselves, then we'll go forward.

MS. BECKER: I'm Nancy Becker, sort of representing the state at large.

MR. PARRAGUIRRE: I'm Ron Parraguirre from Las Vegas.

MR. MOWBRAY: John Mowbray from Las Vegas. Also Henderson, Carson City and a little bit of Reno.

MS. PECK: Bridget Peck, Reno.

MR. ADDISON: Matt Addison from Reno.

MR. AMES: Jack Ames from Elko.

MR. TURNER: Bill Turner from Las Vegas and a little bit of Henderson.

MR. SCHIEGELMILCH: John, Schiegelmilch from Yerington.

MR. CURTAS: John Curtas from Las Vegas.

MS. MORGAN: Ann Morgan from Reno.

MR. WILSON: We've scheduled three public hearings, this being the third. We've had two, one in Elko, we had one in Las Vegas last week with an extensive amount of testimony from a lot of people. This is our last hearing and following this one we're going to deliberate and try to make a, develop a report for the Supreme Court.

Let's take the speakers in any order that you wish to appear. I know Ross indicated he's got a deadline down in Carson. A hot client apparently; is that correct?

MR. DE LIPKAU: That's right, sir.

MR. WILSON: If there's no objection, why don't we take your testimony and then we can let you go.

MR. DE LIPKAU: Okay, thank you. For the record, my name is Ross de Lipkau. I'm an attorney in Reno. By way of background, I have practiced primarily in the field of water rights my entire career. I've had many, many administrative hearings before the state engineer, probably in the neighborhood of 100. Over the years I have noticed an ever increasing number of out-of-state attorneys who appear before the state engineer and, in my opinion, practice law before the state engineer in the identical fashion as do I.

I am, perhaps, somewhat to either blame or place credit upon for starting this process. In May, on May 25th of this year,
1 year I wrote Mr. Bayer of the state bar and requested answers
2 to certain questions. I enclosed a copy of the state
3 engineers' practice and procedure in protest hearings before
4 the state engineer. In essence, I asked whether out-of-state
5 attorneys not licensed to practice law in Nevada did
6 representing federal agencies were practicing law in the
7 appearance before the state engineer.
8 The short answer, which came back June 4th, was yes.
9 out of state attorneys who are appearing before the state
10 engineer on behalf of a protestant or the applicant were in
11 fact practicing law. Shortly thereafter, the state engineer
12 issued a ruling which barred out-of-state lawyers of the
13 non-governmental type from practicing before the state
14 engineer unless they had local counsel. I was recently
15 involved in a, call it a two-week hearing, before the state
16 engineer. When that very instance arose, the out-of-state
17 counsel simply hired a local -< meaning Carson City
18 attorney who sat for two weeks and didn't open his mouth.
19 So in my opinion, and it is my request, that this
20 committee recommend to the supreme court that it issue an
21 order prohibiting out-of-state attorneys from practicing
22 before the Nevada state engineer, and for that matter, all
23 agencies of the Department of Conservation unless they're
24 accompanied by a local duly licensed attorney.

Any questions?

MR. WILSON: Ross, do you know whether the state
agencies in general have any rules with respect to appearances
by attorneys and qualifications?

MR. DE LIPKAU: To the best of my knowledge, the
Department of Conservation only has the state engineer's
recent ruling -< recent meaning the last several months. They
will discuss that, that ruling. The division of environmental
protection, I am totally unaware of. I know they have a, I'll
say a special streamlined procedure for appeals to the
environmental commission. I think appeals to the
environmental commission should be in the same category as
administrative hearings before the state engineer.

MR. WILSON: Presently they don't handle it?

MR. DE LIPKAU: Not that I'm aware of, no. I've never
been confronted with an out-of-state attorney in disputed
matters before the environmental commission.

MR. WILSON: Ross, can I ask you a question? Assuming
that the practice is considered the practice of law, would you
be proposing an extension of SC:<< Supreme Court rule 42
providing the pro hac vice mechanism for appearances before
the different state agencies, similar to what exists now
before the courts of Nevada?

MR. DE LIPKAU: I'm not familiar with 42. I can't

MR. MOWBRAY: There's a rule that will allow
out of state counsel to file an application to move to be
admitted on a case by case basis, and there are provisions
that the out-of-state counsel does have to associate with
local counsel. And I think the rule is articulated that more
than five appearances in a three-year period would be
considered excessive, along those lines.

So there's not a real bright line but there's a
presumption that if you were to appear on a continuous basis
that you would be -- it wouldn't be a proper mechanism to use
that rule to gain admission. And the alternative would be to
sit for a Nevada bar exam and become a Nevada lawyer.

MR. DE LIPKAU: I prefer he or she sit for the Nevada
bar exam. I'm aware of that rule where out-of-state lawyers
are authorized to practice before, let's say, the distinct
courts on a case by case method. I would have no object if
the same procedure were utilized for administrative hearings.

MR. MOWBRAY: Thank you.

MR. WILSON: You're saying that there should be no
substantive difference between an appearance in district
court --

MR. DE LIPKAU: Absolutely not.

MR. WILSON: -- and an appearance before a state
MR. DE LIPKAU: Sometimes. Generally they're saying:
State engineer, here's how they do it in Utah or Wyoming, and
here's six western states, for example, that shift the burden
of persuasion or the burden of proof on an allegation of
perjury. It comes up all the time and to me it's quite
clear in Nevada, and affirmed by the Ninth Circuit, that this
is the law in Nevada. The burden does not shift. It's
brought up time and time again.
I've noticed people not misquoting law, but putting a
spin on it that: Wait a second, that's just not the way it
reads. That's just not the way it's done. I'm not calling
them incompetent. I'm saying they're inexperienced in some
areas of Nevada law and state engineer procedure with an
emphasis on here's how you should do it because my home state
does it this way.
MR. HARDESTY: That operates as a disservice, then, to
their client and an obstruction to the process?
MR. DE LIPKAU: I would say so, yes.
MR. TURNER: Do you think with the limitation that
you're suggesting that they all be required to take the Nevada
bar, does in fact harm the clients with the inability to find
representation here?
MR. DE LIPKAU: No. I think that there are enough
lawyers here. I don't know that I want to be so strict as to
say that an out-of-state lawyer can't go anywhere near the
state engineer's office. I think on perhaps a case by case
basis under 42, if accompanied by Nevada counsel, who's
responsible for the conduct of the out-of-state counsel, is
probably acceptable in the same fashion as an out-of-state
counsel trying a case before Judge Hardesty, for example.
MR. TURNER: Are the administrative procedures somewhat
different than the traditional procedures, that is more
relaxed as to findings of fact and law, that is it's more a
fact finding type of investigation?
MR. DE LIPKAU: In the most recent one I did, this
two-week hearing, I would say it is almost identical to a
courtroom before Judge Hardesty. The statute 533 states that
technical rules of evidence are not to be applied; however,
with half a dozen lawyers and an experienced lawyer hearing
officer, technical rules of evidence do in fact apply.
So I treat an administrative hearing in the identical
fashion as I would treat a regular civil trial over a
promissory note, deed of trust dispute. The witnesses are
under oath, the evidence is premarked, the witnesses discuss
the evidence, cross-examination applies, the breadth of which
is determined by the hearing officer as to how far the counsel
can go.

MR. HARDESTY: Mr. Chairman, I know Ross indicated that
he practices primarily in the water law area, but the question
about other agencies raises an interesting spectra. What
happens in gaming, Nevada tax commission? I would rather
imagine there is a lot of out-of-state counsel that appear
before the Nevada State Gaming Commission. What would be the
impact of a Rule 42 requirement or perhaps having to take the
Nevada bar? I'm not sure.
MS. BECKER: As to the Gaming Commission, the gaming
board, it is primarily in-state counsel, not out-of-state

counsel. But it is true before the PSC that there are a lot
of out-of-state counsel. When we get the petitions for
judicial review or when we see them coming up to the courts.
that's when you suddenly see local counsel coming in and once
you read the records there are no counsel added. And I know
that former Judge Mendoza indicated that there were a lot of
out-of-state counsel because they're brought in for some of
these regulatory proceedings by the utility person.

Mr. Chairman, I know the
state bar staff is overburdened by the work we put on them
anyway, but I'm wondering if it wouldn't be a good idea to ask
the various AGs to comment about the impact to their
perspective agencies. PSC is a really good example.

MR. WILSON: Yeah, we ought to survey it.

MR. HARDESTY: And see what that would do.

MR. WILSON: Yeah, I don't think we have a sense of the
volume.

MR. HARDESTY: I think Ross is correct, in his area
it's a big issue and I suspect it could be in others, but I
don't know the impact down the stream of doing it in other
agencies.

MR. WILSON: I had tried to do an informal survey and I
didn't get a lot of information back on the level of -- what I
did was called the attorney general and she referred me to the
deputy and the deputy, I asked her to survey it and we didn't
really get much back as to any kind of volume or level of
practice. But I agree, you've got to believe that there's a
fair amount of practice both before the Public Service
Commission and the Gaming Control Board, Gaming Commission.
I don't know about the Tax Commission.

I got, generally, a blanket negative but I think we
ought to test that and see how many cases they have and what
the frequency of non-Nevada counsel are and whether they're
appearing on a pro hac basis or otherwise and at least get an
understanding of the terrain.

MR. DE LIPKAU: Okay.

MR. WILSON: Any other questions?

MS. MORGAN: In essence you were relating the
out-of-state attorney brought in a local Carson City attorney who never said anything. Did you believe that the expertise improved by virtue of having the local attorney sitting there?

MR. DE LIPKAU: No, he didn't do anything.

MS. MORGAN: If that's the case, how do you think that Rule 42 might be of assistance?

MR. DE LIPKAU: Don't really know. I think we're faced with a situation that you can't practice before the state engineer unless you're licensed. And stepping one step back from there is: Okay, let the out-of-state attorney show up on a case-by-case method, maybe five within three years or three within five years, whatever the rule is, having local counsel.

Local counsel need not know where the state engineer's office is. He or she would just have a Nevada license.

So I don't know where to draw the line. Obviously, I would like to draw it as strict as I could, but then we get into constitutional arguments. I suppose, if you can't practice before any state agency unless you have a Nevada license. The state engineer's office, some of the hearings range from the incredibly sophisticated with half a dozen experienced lawyers to two farmers representing themselves with absolutely no expertise, and those may be more difficult for the state engineer to try to have some rule of order, some questioning. And what happens, one farmer tries to ask a case by case method, maybe five within three years or three within five years, whatever the rule is, having local counsel.

MR. DE LIPKAU: I don't believe that's the case. I think there are enough lawyers, water lawyers, to go around.

Obviously they range from very good to just learning but I am unaware of any instance where the interests of a claimant, water right holder, were lost by reason of the claimant not being able to obtain the services of a licensed Nevada attorney with some knowledge in water rights. And again, I've seen very good and not so very good at administrative hearings.

MR. TURNER: How often would you say that out-of-state attorneys appear in water rights hearings?

MR. DE LIPKAU: I think it's becoming ever more increasing. I think the state engineer or hearing officer...

MS. PECK: Mr. de Lipkau, how many lawyers would you say in Nevada practice in your area?

MR. DE LIPKAU: Half a dozen to ten.

MS. PECK: Practice in what?

MR. DE LIPKAU: Practice in what?

MS. PECK: Practice in your area.

MR. DE LIPKAU: Half a dozen to ten.

MS. PECK: Have you ever had circumstances where there have been conflicts with someone's representation in their case?

MR. DE LIPKAU: Conflicts of interest.

MS. PECK: Uh-huh.

MR. DE LIPKAU: All the time.

MS. PECK: So right now, what I'm hearing, is that the body of lawyers who practice in this specialized area may not be able to serve all the clients who would need representation in Nevada?
Mr. Turnipseed: Sixty-five cases?

Mr. Wilson: What percentage does that represent, can you guess?

Mr. Turnipseed: Oh, ten to fifteen percent.

Mr. Wilson: Okay.

Mr. Turnipseed: So I conducted my hearing much like Judge Hardesty would in his courtroom; fair amount of decorum, they're all recorded by a certified court reporter, that record is transcript of that record goes up to the court as well. So in my view there's no difference between one of the hearings that I held and the hearings that Judge Hardesty would hold.

The, the -- like I said, I'm licensed in Utah and Nevada and I know the licensing board in those two states. 17 Nevada and I know the licensing board in those two states.

Would not allow the practice of engineering in that state, without being properly licensed. I'm aware of one instance where an out-of-state engineer was at a conference and handing out business cards and our professional engineers board viewed that as preparatory, at least, to practicing engineering in this state.

The rest of the letter is pretty explanatory. I, I.
1. I don't know what else I can add.
2. MR. WILSON: Let me ask a question -- and if anybody
3. has a question, I can't see behind me. Am I correct in
4. understanding you to say that to require an engineer to appear
5. before the state engineer to appear at a hearing, you require
6. that the engineer hold a Nevada license to do so?
7. MR. TURNIPSEED: Absolutely. Generally that person
8. would be called as an expert witness. There was a prior
9. question on, on the frequency. I guess Ross said more and
10. more he sees out-of-state lawyers. The state engineer, today,
11. has 15 applications by major energy companies to build power
12. plants just on the I-15 corridor between Mesquite and Primm,
13. and many others around the northern part of Nevada. And of
14. course those big corporations have their corporate counsel and
15. some will associate with local counsel, some will not. When I
16. was state engineer I adopted as a rule that they had to at
17. least associate with local counsel. And as Ross said, many
18. times they wouldn't even be in the room.
19. The new state engineer, Hugh Richey, has gone further
20. than that and said that they at least have to be in the room
21. if they're going to associate with local counsel. And I
22. don't. I didn't particularly care when I was state engineer
23. who was doing the examination and cross-examination, nor who
24. was preparing the briefs, if there are questions of law -- and

21. I've had him on my side, we've been in the same litigation. I
22. would much prefer to have him on my side than against me, but
23. at any rate there are -- Susan was going to give out some
24. names of lawyers that she knows of that are licensed to
practice law in Nevada and do a very good job in our hearings.
6. MR. WILSON: Let me go back to another one of your
7. points in item -- and that had to do with when you were state
8. engineer. Your requirements with respect to accepting the
9. participation and testimony of expert judgment of the
10. engineer, if I understood you correctly, your practice and
11. policy was to limit that kind of participation to Nevada
12. licensed engineers?
13. MR. TURNIPSEED: That's correct.
14. MR. WILSON: Do you have occasions where you have had
15. an engineer from another state, licensed in another state, not
16. Nevada, offer testimony or judgment or expert testimony and
17. how did you handle that?
18. MR. TURNIPSEED: I did have that occasion, and again,
19. those kinds of, of -- generally they were, they were proposed
20. as an expert witness in a particular field of hydrology or
21. ground water hydrology our hydrogeology or geohydrology -- and
22. whenever I'm amongst the geologists I ask them what the
23. difference is and they never have given me a satisfactory
24. answer -- but geologists are not licensed in this state.

1. I would always require a post-hearing brief and have both
2. sides, applicant and protester, prepare a brief on the law of
3. that issue, and sometimes those get pretty lengthy and they
4. would be pretty abstract. But at any rate, I didn't
5. particularly care whether it was the associate that was
6. preparing the briefs our the counsel, out-of-state counsel.
7. MR. WILSON: What was your practice with respect to
8. counsel admitted to practice here, counsel from out-of-state,
9. and whether that counsel was simply appearing on his or her
10. own or in association with the pro hac vice with Nevada
11. counsel?
12. MR. TURNIPSEED: I didn't particularly care as long as
13. I got the evidence I needed to make the decision.
14. MR. WILSON: You're concerned with the evidence and
15. engineering and not so much the lawyer?
16. MR. TURNIPSEED: That's correct.
17. MR. WILSON: But do you have a view as to whether or
18. not the lawyer ought to be admitted as a Nevada lawyer or
19. ought to be associated the a Nevada lawyer or -- under the pro
20. hac vice?
21. MR. TURNIPSEED: I think there are plenty of qualified
22. Nevada lawyers that have anywhere from a minimal understanding
23. of water law to a very, very good understanding of the water
24. law. In the case of Mr. de Lipkau, I've had him against me,
1. counsel on either side.
2. But it's up to the applicant or the protestant to
3. prepare his case and bring the case forward and make sure his
4. experts get the proper testimony on the record because that's
5. the only thing that is going to the district court. I can
6. only make a decision based on the record that I have before
7. me.
8. MR. TURNER: Actually, my question really was more
9. directed to law that's in development and practiced
10. historically, and sometimes just by bringing in new concepts of law
11. or the idea of how it's practiced in other state, adds
12. some enrichment to our own practice. Do you think that's a
13. benefit in the sense of legal theories, and even hydrology
14. might be helpful?
15. MR. TURNIPSEED: Well, I would hope that the field of
16. hydrology is pretty universal, not just throughout the country
17. but throughout the world.
18. MR. TURNER: But is the law?
19. MR. TURNIPSEED: But the law is different, obviously,
20. in other states, but I have to make my decisions based on
21. Nevada law. Now, many times in asking for briefs they would
22. cite case law from other states sometimes there was some
23. rationale to apply in Nevada and sometimes it was not.
24. particularly if the law was silent, the Nevada law was silent

25. on that issue or...
26. MR. TURNER: Which it sometimes appears to be.
27. MR. TURNIPSEED: -- or a little gray.
28. MR. SCHIEGELMILCH: If there's -- one of the questions
29. I have is that the administrative agencies all have their own
30. rules regarding conduct in the proceedings and the rule out
31. there for the state engineer, as I understand it, pretty much
32. says you can either be represented by someone called a
33. representative or if it's an attorney who associates with
34. counsel. That's generally a new ruling. If that's the case,
35. why doesn't the state agencies copy their regulations to --
36. not for them to practice? Don't you feel that the agencies
37. have the authority to do that?
38. MR. TURNIPSEED: The regulation that requires a lawyer
39. to be associated -- I mean, either a member of Nevada bar or
40. associate with a member of Nevada bar has been promulgated
41. through the regular regulation procedure. Most recently, I
42. think, was by letter -- that Susan could speak to that with
43. more intelligence -- but it was that the associate had to be
44. in the room.
45. MR. SCHIEGELMILCH: From what I understand, there's
46. always been -- that regulation has been there.
47. MS. JOSEPH-TAYLOR: It's relatively new.
48. MR. SCHIEGELMILCH: When was it adopted?

1. MS. JOSEPH-TAYLOR: I drafted the rules for the state
2. engineer when I became the deputy attorney general in 1993.
3. MR. SCHIEGELMILCH: Okay, but is that just the water
4. agency rule?
5. MS. JOSEPH-TAYLOR: Yes. And it only applies to
6. hearings on protested applications. It does not apply to
7. forfeitures, well-driller hearing, adjudication. Everything
8. else, the legislation required the state engineer to draft the
9. rules, found in chapter 533, and that's all they apply to.
10. MR. TURNIPSEED: And they're published in Freedom
11. Public and this is what they look like.
13. I would like to address a few of your requests.
14. MR. WILSON: Would you, please?
15. MS. JOSEPH-TAYLOR: Yeah, I'm chief of the hearing and
16. adjudication section in the Division of Water Resources.
17. Mr. Mowbray, you asked about Rule 42, pro hac vice?
18. MR. MOWBRAY: Yes.
19. MS. JOSEPH-TAYLOR: I can see the abuse already.
20. They're going to say it's one case. In Nevada you have an
21. adjudication on the Truckee River and you have an adjudication
22. to the Carson River. The Truckee River is called the or ditch
23. case, the Carson River is called the Alpine case. In October
24. 1995 the court remanded to the state engineer what it called
25. the GGID transfer case. They've been in litigation for about
26. 15 years, now. It is actually over three hundred cases in one
27. case under one title. It's three hundred different water
28. right applications. We have lawyers representing -- well, the
29. tribe is represented on all three hundred cases by one lawyer.
30. not licensed in Nevada, who's been practicing here for 30
31. years. About 150 clients were represented by a firm out of
32. San Francisco. So they could say I'm not here on five cases.
33. I'm here on one case. So you're already around that rule.
34. MS. BECKER: How many of the people who are hiring
35. out-of-state counsel are out-of-state clients and therefore
36. they want to keep the same counsel they're familiar with? The
37. second part of my question is: On many of these decrees that
38. you're talking about you have multi-state issues; either the
39. water basins cede beyond state boundaries or the rivers or the
40. tributaries, et cetera, are coming from areas that are not
41. located in the state of Nevada and the people who are
42. appearing in Nevada, because Nevada court may have the decree
43. control, are actually people who live and reside out of state?
44. MS. JOSEPH-TAYLOR: Very few. You can actually answer
45. that question in two ways. The over three hundred cases that
46. were sent back in 1995, those are all farmers in Fallon. Then
47. you go to the adjudication world where we're adjudicating the
48. Owyhee, the Jarbridge and the Bruno Rivers in Northern Nevada.
1. They flow into Idaho and Oregon. But we aren't adjudicating the Idaho and Oregon rights, we're only adjudicating the Nevada rights.

4. In response to another question, I can -- and I've been jotting these down as you've asked your questions. I can tell you about lawyers from Utah, California, Colorado, Washington, New Mexico -- and that was very quickly jotting down a few.

9. I'm working for an Indian tribe downtown Las Vegas but this was what I was given.

19. And he said: It doesn't look like I'm in the state of Nevada, I'm working for an Indian reservation. We were sitting in downtown Las Vegas but this was what I was given.

22. Justice Becker on some of these, occasionally it squeaks to the federal court because these are decreed streams. The federal court sends them to the administrative agency and then they go back to the federal court. So occasionally -- I know Justice Becker on some of these, occasionally it squeaks through the supreme court -- and they will appear there and local counsel is there. But I can list a couple of hundred cases, easily, in the last couple of years that out-of-state lawyers are practicing. The hearing Ross was just talking about, we had four weeks of hearings this summer and I believe there was one or two out-of-state lawyers in those hearings.

15. We purposely drafted our hearing rules very broad because Ross was right. We have, for example in these GGID

11. If he was licensed to practice law in the state of Nevada.

12. And he said: It doesn't look like I'm in the state of Nevada.

13. I'm working for an Indian reservation. We were sitting in downtown Las Vegas but this was what I was given.

14. I quickly tried to jot down names of water lawyers I know. I could come up with 23 off the top of my head sitting here. So I disagree with Ross, there are more.

18. MR. WILSON: That's Nevada licensed water lawyers that are qualified to practice in that field, 23?

20. MS. JOSEPH-TAYLOR: Yes, uh-huh. And that was just very quickly going by who I worked with in the last couple of years.

21. I have a feeling that I'm going to have to list them and they are very well qualified for these issues. I

22. MR. WILSON: Any, just general.

23. MS. JOSEPH-TAYLOR: Because you're -- I'm just giving examples. In Indian issues you find the best Indian lawyers

1. They flow into Idaho and Oregon. But we aren't adjudicating the Idaho and Oregon rights, we're only adjudicating the Nevada rights.

2. The Idaho and Oregon rights, we're only adjudicating the Nevada rights.

3. In response to another question, I can -- and I've been jotting these down as you've asked your questions. I can tell you about lawyers from Utah, California, Colorado, Washington, New Mexico -- and that was very quickly jotting down a few.

6. Saw in the last few years. I actually had a lawyer say to me once I was sitting in the Las Vegas Water office with Mike and I asked this lawyer representing an Indian tribe if he was licensed to practice law in the state of Nevada.

7. He said: It doesn't look like I'm in the state of Nevada, I'm working for an Indian reservation. We were sitting in downtown Las Vegas but this was what I was given.

10. I quickly tried to jot down names of water lawyers I know. I could come up with 23 off the top of my head sitting here. So I disagree with Ross, there are more.

12. MS. JOSEPH-TAYLOR: What's causing all of these lawyers to come in?

13. MR. WILSON: Yeah, and require -- for example, you just eluded a minute ago to an area of your practice which requires a great deal of expertise, much of which you find out-of-state and much of which you find in-state.

14. MS. JOSEPH-TAYLOR: It's here, also. You can take Gordon DePaoli, you can take Greg Walsh, you can take Dale Ferguson, Steve King, Mike Mackedon.

15. MS. BECKER: I think he was referring to the tribal counsel.

16. MR. WILSON: No, I'm saying you can take all of them and they are very well qualified for these issues. I

17. MR. WILSON: Why does a party, the employer agency, retain an out-of-state lawyer as opposed to a Nevada lawyer?

18. MS. JOSEPH-TAYLOR: In Indian issues?

19. MR. WILSON: Any, just general.

20. MS. JOSEPH-TAYLOR: Because you're -- I'm just giving examples. In Indian issues you find the best Indian lawyers.
to go to the state residence wherever the lawyer is licensed,
and I don't even know if they would allow that in a different
state.

MR. TURNER: But certainly doesn't the client obtain
the right to sue them for malpractice?

MR. TURNIPSEED: I suppose he does. I don't know what
type of burden the client would carry.

MS. BECKER: I think one of the issues, there may be a
reason now for dealing with the unauthorized practice before
administrative agencies that didn't exist 30 or 40 years ago.

I disagree with counsel in terms of it's a real easy issue
because there are a number of cases in the United States that
have indicated that an agency allows an individual to have
a non-lawyer represent them, as I understand state engineering
does, you can have anybody come up and speak for you, that you
cannot then say that that person has to be a lawyer licensed
in the state of Nevada and that doing so is the unauthorized
practice of law, because you can ask for anyone to represent
you and speak for you and that person would not be practicing
law.

And so those cases that are dealt with have made a
distinction in administrative agencies because traditionally
administrative agencies were intended to facilitate people being able

Now, the rule has changed a lot and therefore that underlying
philosophy may no longer be valid and I would like comments
with regard to that.

MR. TURNIPSEED: Let me see if I can comment on that.
I have allowed engineers to represent a client, licensed in
the state, and they -- generally I do the questioning if
there's opposing counsel then they can do the
cross-examination, but I do not let the engineer or surveyor
or hydrologist examine or cross-examine the witness. That's
purely in the field of law and in my view and it ought to be
the lawyers doing the examination and cross-examination.

Now, if they just want to get up and give evidence of
his report or his expertise, he says: The water flows this
way, it will not dry this guy's well up. I'll allow that in
but I will do the questioning. And again, allowing the
opposing counsel to cross-examine, but I don't allow an
engineer or surveyor to do the examination. Or they will
frequently submit a report stamped as an exhibit, opposing
counsel has an opportunity to question on its authenticity, on
its relevance, et cetera.

Back -- I was going to make another comment. The only
deviation that I can think of between our rules of evidence
and testimony and what a district judge would have, is in the

You do allow that in most administrative agencies, and
it seems to me that if we're going to propose a rule then we
need to weigh -- because I think in order to be constitutional
we would have to prohibit all of that representative
testimony -- and weighing that, if that is what we wish to do
or not wish to do for a public interest standpoint.

MR. HARDESTY: What is Ms. Joseph-Taylor's view on
that? I know you said they should all be licensed, but --

MS. JOSEPH-TAYLOR: I don't necessarily think so, Your
Honor. I think I've seen excellent representation by some of
these out-of-state lawyers on -- for example, let's take the
tribal issues on the Truckee River. If you don't have 30
years of institutional memory and have been through all of
this, I don't know that you can adequately represent those
people.

MR. HARDESTY: Well, I've attended hearings in front of
Mike and frankly it scares the hell out of me. I mean, it's
so complex. It's so complex --

MS. JOSEPH-TAYLOR: Yes.

MR. HARDESTY: -- that it is an area that almost goes
to a point where out-of-state lawyers aren't really the issue.
It's extent -- it's background, it's knowledge that's so
steeped in the law.

MS. JOSEPH-TAYLOR: And Nevada's law is different than
1 Oregon's law and Utah's law.
2 MR. HARDESTY: Sure.
3 MS. JOSEPH-TAYLOR: And in a hearing I just had, I had a lawyer out of Washington who was saying things and I was just shaking my head and I think I said on the record: Then you don't know what Nevada law is. So I have seen that.
4 MR. HARDESTY: But that gets to the point that I think this commission needs to be concerned about. In addition to complexity that you deal with -- I hope Mike doesn't, I hope he stays alive a long, long time, you too -- but in addition to the complexity of the subject matter, you're also dealing with a very sophisticated approach to the way your hearings are conducted. There may be relaxed evidence rules and so forth in some administrative agencies, but not in your shop. MS. JOSEPH-TAYLOR: It's going more towards a trial setting all the time. The hearing I did a couple of weeks ago, I was running eight or nine lawyers at the same time. You have to bring some of that decorum to it or it turns into a circus.
5 MR. HARDESTY: I just think the level of sophistication in your area from a legal standpoint -- the rules you use, the evidence you apply -- kind of dictates maybe we heed to look at the use of lawyers and regulated lawyers in Nevada.
6 MS. BECKER: Do you think that the registration procedure we've discussed, the concept that maybe in certain types of areas we don't want to require people to go through a pro hac vice but we might want to require more of a registration so that we can check backgrounds and make sure that they understand that they're subject to the local rules and disciplinary practices and things of that nature. So there's ability to regulate them from a public interest standpoint but not necessarily deprive the public of the ability to hire out-of-state counsel requiring certain regulations. And if you have no immediate response, just think about it.
7 MS. JOSEPH-TAYLOR: Well, I was just trying to think about it because we drafted the rule to associate, and to tell you what, they have associated with people who don't have a clue about water law. It's a body sitting there. I feel sort of foolish but it was our rule. Do we start to enforce it?
8 I've had lawyers who associated with local counsel whose bar licenses are suspended. I had to call and check on them. So the state engineer, State Engineer Richey saying I want them here, I want to see them, I want them in the room, has taken it a step further. It's such a small group but it is expanding, particularly with these power issues, these tribal issues. It's almost exponential right now, and that's part of our concern and part of the reason to associate. I don't think it would hurt, it just brings a degree of respect to the process.
9 MR. TURNIPSEED: Let me go back a few years. When I first came to the state of Nevada we resolved a lot of protested applications by what we called an informal field investigation. If it's applicant farmer A and protestant farmer B we would hold this field investigation out on the edge of the ditch. Why do you not want the application approved? Why do you need the application approved? The field investigation report was written up and a decision was based on that. Those were rarely appealed: More and more, since more and more of the contested applications are appealed, then of course, again, you have to build a record otherwise you just get it remanded back and you have to hold a hearing anyway. You might as well hold it right up front. So more and more of the hearings -- or contestations I should say -- are going to the full, formal hearing where the testimony is sworn and the evidence is marked.
10 Some, particularly the United States, I held the hearings on the Yucca Mountain filings and there were nine days of hearings and those U.S. attorneys didn't feel comfortable so they associated with local counsel and he did all of the examination, wrote all the briefs, et cetera.
11 I've been in•house counsel for SPC Communications for about 16 and a half years. SPC has approximately three hundred attorneys scattered around through 20 states and
But currently when I came, when I came to Nevada, because I'm new to the state and certainly don't want to get in trouble with the bar early on, I asked our outside counsel to -- what was permissible in Nevada. And the response that I received was that it's all right to advise counsel internally but you cannot communicate to third parties about claims and disputes regardless if they're in an agency or court. Now, that is a very cumbersome process, especially in Nevada where you only take the bar once a year. Basically what that tells you is that for about 15 months -- I came in August, the bar is offered in July -- that for 15 months I cannot communicate with a third party in the state of Nevada about a claim or dispute.

Well, Nevada Bell, unfortunately, because we have a lot of vehicles, we have a lot of employees, we have a lot of customers, we get involved with a fair number of disputes from time to time. And so it leaves you in the role of telling your clients, well, this is what you have to tell somebody, now, and I've appeared before the West Virginia Public Service Commission, the Texas Public Utility Commission, the Oklahoma Corporation Commission, I have not been before the Public Utility Commission here in Nevada. I came back a month ago. But some of those agencies allow you to appear without counsel, some require it. And so I'm advancing two recommendations. First, the few states that we actually have attorneys located in that have a fairly restrictive reciprocity policy. And so I'm advancing two recommendations. First, recommendation is that the commission think about adopting rules that clearly delineate what an attorney can and cannot do as an in-house attorney pending admission to the bar. That varies from one state to another. Some states, for example, have a fairly liberal policy in terms of allowing the attorney to advise counsel or to advise their clients, in-house clients, as well as to communicate with third parties on claims and disputes. And about where they draw the line, almost all states, is that if you're not admitted you can't appear in court by yourself, you have to associate and deal with local counsel. And then there's some differences in terms of administrative agencies. Some are more lax than others. I have appeared in my practice I've been in four, five states now, and I've appeared before the West Virginia Public Service Commission, the Texas Public Utility Commission, the Oklahoma Corporation Commission. I have not been before the Public Utility Commission here in Nevada. I came back a month ago. But some of those agencies allow you to appear without counsel, some require it.

MR. WILSON: And your activity is limited to Nevada Bell and you're in-house counsel for Nevada Bell?

MR. FOLEY: That's correct, yeah. The only third party I deal with are normally either adversaries, folks calling, making claims -- or disputes -- and then I represent the company's interests, if I can do that.

MR. WILSON: Right.

MR. FOLEY: But I would not give outside advice, no, to the public.

MR. WILSON: Right.

MR. MOWBRAY: For our record.

MR. FOLEY: It's a wholly owned subsidiary.

MR. WILSON: And your activity is limited to Nevada Bell and you're in-house counsel for Nevada Bell?

MR. FOLEY: Right. My office is located in Reno, I'm responsible for the legal matters in Nevada.

MR. WILSON: Right. So you don't mean, as in-house counsel you don't hold yourself out to the public as a lawyer.

MR. FOLEY: That's correct, yeah. The only third parties I deal with are normally either adversaries, folks calling, making claims -- or disputes -- and then I represent the company's interests, if I can do that.

MR. WILSON: Right.

MR. FOLEY: But I would not give outside advice, no, to the public.

MR. MOWBRAY: Mr. Foley, can I ask you to read into the record your attachment C? It's not that long.

MR. WILSON: Mr. Foley, can I ask you to read into the record your attachment C? It's not that long.

MR. FOLEY: Okay.
1 of Columbia to practice law may be employed as in-house
counsel in the state of Nevada and shall be permitted to:
A) Provide legal counsel to his or her employer. 
B) Communicate and negotiate with third parties on
behalf of his or her employer regarding but not limited to
such matters as complaints, disputes, claims, contracts and
settlements. 
C) Represent his or her employer in court proceedings
provided that the in-house counsel attorney associate with
licensed Nevada counsel -- or Nevada attorney.
D) Represent his or her employer in administrative
proceedings and, if permitted by the agency, can do so without
the assistance of a Nevada licensed attorney. 
E) Take those actions that a non-attorney of the
15 corporation could lawfully perform as a management employee or
officer of the corporation, provided the in-house attorney is
a management employee or officer of the corporation.
17 In section two:
19 In-house attorneys will be subject to the following
disciplinary proceedings, will be subject to the disciplinary
proceedings of the Nevada -- of Nevada for violations of the
rules of professional conduct and must comply with the
following requirements:
A) In-house attorney must comply with Nevada's CLE
requirements where licensed attorneys maintain records
sufficient to document compliance if requested.
B) In-house attorneys must be admitted and remain in
good standing with the highest court of another state or the
District of Columbia until such time that they're admitted in
Nevada.
And then C) On external correspondence and business
cards, in-house attorneys identify the states they are
licensed to practice so that it is clear that they are not
licensed in Nevada.
MR. WILSON: Would you add to that that it would be
good public policy if in-house counsel were required to
register with the state bar, that is, in-house counsel that is
representing a company that he or she is employed by as
in-house counsel, and obviously comply with CLE requirements
and other professional standards so that they're of record?
MR. CURTAS: How many attorneys are employed here?
MR. FOLEY: Here in Nevada Bell?
MR. CURTAS: Yeah.
1 admitted.
2 I'm also recommending a second rule and some call it
3 reciprocity although you could call it other names, too. You
4 could call it admission by application. Several states, and
5 there are examples in the packet. The state of Washington, the
6 state of Missouri, the state of Kansas have specific rules
7 allowing for either temporary or limited licenses to practice
8 law for in-house counsel. Basically it has the same
9 limitations as the -- it's sort of the interim step I've
10 outlined, before you're admitted. But it also allows you to
11 appear before an agency of the courts. One exception, the
12 state of Washington. I think, has a specific prohibition
13 saying you can't appear in court even with that limited
14 license. But Missouri and I think Kansas you can appear in
15 courts in administrative agencies.
16 The administrative agencies, it's probably the area of
17 law that I know most about just because I've been in
18 telecommunications for 16 years. That is one area that having
19 out-of-state attorneys or people with experiences in other
20 jurisdictions, I think, are extremely helpful. A lot of the
21 issues right now for telecommunications companies, especially
22 the former Bell Operating Companies such as I'm employed by,
23 deal with a telecommunications act of 1996 and a
24 communications act.

1 Most of that is federal but it's federal requirements
2 that are planted on -- or that are placed upon the state
3 agencies where they have to make all sorts of fact findings,
4 and the rules are very complex, the proceedings can last for
5 two to three weeks, some have lasted months, and there are
6 more really federal issues that come into play than state
7 issues. And that area of the law, it's more helpful to have
8 someone who has background in that aspect of the law than what
9 the local court law or the state law is, although I think it's
10 helpful, certainly, to have some experience in that in terms
11 of how to make objections, what are the proper procedures; do
12 you stand up to make an objection, that sort of thing. You
13 know, what the burdens of proofs are and that sort of thing.
14 A lot of that you can learn but the more complex area is the
15 telecommunications area so I think the out-of-state attorneys
16 that have experience in that that relocate to the state
17 certainly have a lot to offer in that respect.
18 MR. WILSON: This is before the PUC?
19 MR. FOLEY: Yes, sir.
20 MR. WILSON: What is the PUC policy and practice with
21 respect to appearances and local counsel?
22 MR. FOLEY: I've not talked to anyone with the PUC,
23 I've talked to our outside counsel, but what I've been told is
24 that if you want to appear at a proceeding you can do so but

1 you need to appear with local counsel. I don't ever recall
2 seeing a rule to that effect but I think --
3 MR. WILSON: But that's your understanding?
4 MR. FOLEY: That's my understanding.
5 MR. WILSON: So anytime Nevada Bell appears before the
6 PUC -- or do you appear on this behalf and for the appearance
7 you associate with Nevada counsel?
8 MR. FOLEY: Yes, sir. That's my understanding of the
9 current rule.
10 MR. WILSON: Right. Is it necessary, in your judgment,
11 to associate with Nevada counsel for the substantive reasons
12 of your appearance?
13 MR. FOLEY: I don't believe so. The hearings that I've
14 been involved with in the past, the Public Utility
15 Commissions, involve areas that are sort of not unique to any
16 specific state. They involve either the telecom act or the,
17 the PR or the regulations. The regulations are fairly common
18 from one state to another. How much deposit can you require
19 of a customer? Can you terminate service without notice under
20 what situation?
21 The local rules vary from one jurisdiction to another
22 but the arguments that you make to support a change of the
23 rules are basically the same.
24 MR. WILSON: With respect to your illustration a moment

1 ago where you're applying federal standards and requirements
2 and criteria that are applicable in the state, but
3 nevertheless on the subject of a PUC hearing for purpose of
4 the application, I'm drawing the inference from what you said
5 that local counsel really aren't much help subsequently. You
6 may have to retain one on a pro hac basis but the laboring law
7 you carry yourself. You know what the standards are, you know
8 how they apply, you can address the Public Utilities
9 Commission on how they should apply and should not apply.
10 local counsel really isn't necessary and isn't a necessary
11 expense?
12 MR. FOLEY: In certain situations I think it's
13 absolutely true. In other situations --
14 MR. WILSON: You're going to want to hire local
15 MR. FOLEY: -- I would hire local counsel depending on
16 the how much --
17 MR. WILSON: It depends on the situation?
18 MR. FOLEY: Right. And also being brand new to the
19 state I would not just go into the Public Utility Commission
20 by myself the first couple of times, I would associate with
21 local counsel just to learn the way and the process. You
22 don't want to alienate those judges at the first at bat and so
23 you would want to associate with local counsel just to get a
24 better feel for the proper decorum and the proper procedures.
On the application process, you might ask yourself:

1. Why should we have a special rule for in-house counsel? And I think that's a fair question. I think you don't have a lot of ethical issues with in-house counsel that you do with law firms and folks that hang up a shingle. They're not handling you know if you read the bar journal and you read the reprimand and the disciplinary sections, there seem to be like four or five themes that you see constantly which lead attorneys into misconduct allegations.

   1. Client funds is certainly one, combing your client funds into trust accounts and that sort of thing. In-house counsel don't handle those. Solicitation of clients, improper solicitation, advertising type issues, in-house counsel doesn't get involved with those. Fee disputes is another common area. In-house counsel don't bill fees so you don't have those type of issues associated with in-house counsel.
   2. And the client is in a much stronger position to take disciplinary action against the attorney if they mess up or if they miss the statute of limitations or something. They can terminate the attorney, they can cut their salary. So the client has a lot more control than someone who just merely retains somebody off the street over that individual.
   3. Lastly, I think it's good for the state of Nevada that large corporations are constantly relocating. Since the time

   21 MR. HAMILTON: I have one question. You describe your first recommendation as an interim procedure until the time that you take the Nevada bar. Is that the case and if so do you recommend a termination date or a certain period that one can register after which it expires and you can't do that anymore. you have to take the Nevada bar?

   22 MR. FOLEY: No, perhaps I was a little confusing. The rules on attachment C is basically once you get to the state the first day that you arrive in that state, what is permissible versus impermissible for in-house attorneys. I would still recommend a second step, and that is you allow attorneys for in-house to be admitted by application. Typically the states that I've, did my reciprocity, Texas and Missouri were the only two -- and Maryland has kind of a hybrid where they take half the exam -- but in those two states it typically takes about six months to eight months even once you start the paperwork process to get admitted. You have to request all of the forms, like the certificate of good standing from the foreign court. And you get all that and your application, they do background checks, a lot of them do FBI checks, they get your fingerprints, but it's a fairly complicated process and that takes about eight months. After that eight-month period then they would be admitted under that special or limited license to practice law.
1 to serve out-of-state counsel by fax, at least in the emergency situations if not always. But there ought to be some kind of a modifier on it so that it can't be used as a weapon to serve somebody at 9:00 o'clock Friday night and the person doesn't come to their office over the weekend and all of a sudden they've got five -- three to five days to answer. Like over the Thanksgiving weekend you could get really hurt that way. There ought to be a way to keep that from being a tool of oppression.

The next thing I'd like to talk to you about is Mr. Mowbray: Dave, can I ask you from that point on the fax. In the cases where you're concerned, don't you have local counsel that you can also affect service on, local counsel in addition to out-of-state counsel?

Mr. Hamilton: As an example, there is a gentleman by the name of Doyle who is subject of the Barrett versus Baird decision who practices in Sacramento, and his local counsel is Kim Mandelbaum in Las Vegas. And you need an order here in Reno, short in time, you want to give them advice that you're going to go seek it from the judge, how do you serve Kim Mandelbaum in Las Vegas for a Sacramento attorney? That's just one example of why I think you need a rule on that.

The second thing I wanted to talk about is I do a lot of attorney malpractice cases and frankly I'm getting a little sick and tired of not being able to sue some attorneys because it's useless, you get a piece of paper. I think that there ought to be mandatory malpractice coverage for not only Nevada attorneys but for the out-of-state, but for particularly the out-of-state. And I think that there ought to be some way that they have to prove that the policy covers their acts in the state and that they consent to jurisdiction in our local courts and not remove it to federal court. There ought to be a waiver of their right to remove because the people, for instance, who were malpracticed in Elko, they ought not to have to come to Reno and get a federal court to deal with their case, they ought to be able to do it in Elko County -- White Pine County, wherever.

So I think there ought to be a stipulation that they consent to jurisdiction in the local state courts for malpractice.

Mr. Wilson: On the part of an insurance company? Mr. Hamilton: Well, I think that if you bind the attorney when he somehow registers or become a member or becomes able to practice here, that he sign some document waiving. I would think that would be binding on the insurance company.

Mr. Wilson: It would?

Mr. Turner: Yes.
1 close the market off to a great degree to out-of-state attorneys.
2
3 MR. CURTAS: Doesn't that basically abrogate the entire qualification to practice law in Nevada? Basically we're just opening the doors and saying anybody in any state can practice law. As long as you're licensed somewhere else you can come here in an unlimited capacity and practice law here.
4
5 MR. HAMILTON: Yes. 9
6 MR. CURTAS: Just by signing a register somewhere.
7
8 MR. HARDESTY: Well, you're talking, David, about a registration process that requires the parties to submit to requirements and the like.
9
10 MR. HAMILTON: I'm sorry, I don't remember the name of Mr. Hamilton.
11 MR. HARDESTY: Well, you're talking, David, about a registration process that requires the parties to submit to requirements and the like.
12
13 MR. CURTAS: Doesn't that basically abrogate the entire qualification to practice law in Nevada? Basically we're just opening the doors and saying anybody in any state can practice law. As long as you're licensed somewhere else you can come here in an unlimited capacity and practice law here.
14
15 MR. MOWBRAY: Let me give you a hypothetical just to kind of test your theory here. If you had an out-of-state lawyer, say licensed in Indiana in good standing, under your model he or she should be able to come to Nevada, register and then do an act in Nevada you're subject to discipline by the state bar. And I'm sorry, I don't remember the name.
16
17 MR. MOWBRAY: Bar versus Waters?
18 MR. HAMILTON: Yes. So I think that that's already covered. I don't, I don't know if the disciplinary process needs to be fine-tuned. I sat for nine years on the disciplinary committee and I think that I would have one caveat to an out-of-state attorney who is being charged with disciplinary violation, that he has to have a local attorney, in that process, to deal with him. But I guess that comes back from my bias of seeing too many attorneys representing themselves in front of the grievance committee and not doing too well and making the panel's decision harder to make.
19 MR. MOWBRAY: Let me give you a hypothetical just to kind of test your theory, here. If you had an out-of-state lawyer, say licensed in Indiana in good standing, under your model he or she should be able to come to Nevada, register and then do an act in Nevada you're subject to discipline by the state bar. And I'm sorry, I don't remember the name.
20
21 MR. HAMILTON: I practice with a number of attorneys; I've been real lucky, some of them have been real good. Tom Sheridan, I don't know if any of you know Mr. Sheridan. He was the United States attorney for the southern district of California. He prosecuted Hoffa and got him. He didn't have any trouble.
22
23 page 61
24
And, you know, any other business almost, except maybe doctors, lawyers, engineers, and even some of those states the engineers can go practice in other states with just a Nevada license. Why should we be any different as lawyers? Why should we have a closed shop?

MR. WILSON: David, thank you.

MR. HAMILTON: Thank you.

MR. WILSON: Good morning.

MR. CROWLEY: Good morning, my name is Martin Crowley.

MR. WILSON: Good morning.

MR. HAMILTON: Thank you.

Mr. Foley's comments, I think, are very important. I don't think that we should be restricting in-house counsel for corporations like Nevada Bell or other corporations that choose to locate their businesses here. I do a lot of business work with corporations that are just starting out. They're just -- they want to come to Nevada and make it their headquarters and as most of you know this is one of the prime states to incorporate your business, that and Delaware. And we're doing everything we can to promote that. Well, if we do something like restrict their counsel then we're cutting off part of that line of work.

MR. WILSON: Like in-house counsel?

MR. CROWLEY: Like in-house counsel. I don't think he should be restricted. He's obviously well qualified. He knows his business. Why should he be prohibited from appearing before the Public Utilities Commission or something of that nature? It's like -- it's not likely he's going to find a local counsel to associate with that knows his business better than he does.

So in those specialized areas like they were talking earlier with the water law, things of that nature, you've got these professors and people from, you know, Colorado and places like that, you're not going to find somebody probably more qualified than those attorneys, and to require them to associate, necessarily, I don't think is -- you've done anybody any favors.

I've practiced in Nevada for 14 years now, mostly trial practice, and I've appeared in almost every court in this state. I've appeared many times over in Yerington. I've been in Carlin in the justice court and if you've never been in Montello, that's an experience for you, you know. And so all of these little courts, you've got a different flavor everywhere you go: Austin, Eureka, Ely, Lovelock. You know. you go to Lovelock and you go to a converted church. That's the courthouse. So you have a different flavor everywhere you go.

And I've practiced in front of judges in Saint Louis and in Utah and in Washington, and in the Saint Louis experience I went through the formal process that they have there but it's not quite as strict as ours, just associated with local counsel. He showed up the day of the hearing, introduced me to the judge and he says: I've got another hearing in department such-and-such, Judge. If you need to get ahead of me but he appears to be qualified and he knows the case and so he's here and good luck, you know, type of thing.

And for that particular case it was important to be able to do that. I don't even think it was that necessary to employee the local counsel, though, because it cost my client a lot more money than it would have because it cost him already a bunch of money for my travel there and things of that nature. It was a case that had been removed, of course, from Nevada. I was intimately familiar with the facts of the case. Everything that took place took place here but we got jurisdictioned over into Missouri on contract and so there we were.

And in the case of Utah the judge admitted me pro hac vice right there on the spot to represent my client. And I thought that was appropriate, I wasn't there to practice law. I had a client that lived there and had a problem that needed to be resolved and I was familiar with the facts of the case so that was more important to her than to try and employ a local lawyer, pay them a bunch of money to get up to speed and to deal with a short, 45-minute or one-hour hearing.

So I think there are, there are causes that should be allowed -- where people should be allowed to practice in various jurisdictions but we're only going to get as far as we get. We need to show that we're as open here as other places are willing to be. But at the same time, David's right. We've got to have some sort of protection, too, for the citizens of this state. If somebody's coming in and practicing, practicing law, there's got to be some sort of protection to them.

MR. WILSON: Has your experience been in representing Nevada clients whose matter has to be tried in a foreign jurisdiction, Utah or Missouri or --

MR. CROWLEY: Yeah, and that was the case. In the Utah one the person had relocated and that type of thing, and I'm on another case over there now because it happens to be a
1 family member. The family member is more comfortable with my
2 representing them than hiring a stranger. And I'm associated
3 with local counsel there but he just signs the paper and
4 submits it to the judge and I'm there, you know.
5 And I think that we should provide for that type of
6 thing. I mean, if you've been practicing a certain number of
7 years, the rules may be a little bit different but they're not
8 that much different. The Rules of Civil Procedure are
9 substantially the same from state to state. Things of that
10 nature, and there's little local rules that you've got to
11 grasp on to but it's not that difficult to jump in there.
12 But I think, you know, registering is a good idea but I
13 don't. I don't think you should be able to just come here,
14 just because you've registered, every time and be able to, you
15 know, just jump in and do a case. I don't think that's
16 right either. I think that you should register for each case,
17 each time that you appear, although I do disagree with the bar
18 fee thing. I wouldn't -- it would have been really
19 prohibitive in Missouri to have paid that fee for the one, the
20 one hearing, essentially. I mean, we had a, you know, a
21 hearing on jurisdiction and there we were. We were there for
22 one day.
23 MR. WILSON: Sort of like a tariff?
24 MR. CROWLEY: It would have been an extremely high
25 fee.

1 tariff for my client, and he was going up against a large
2 insurance company and he was an insurance agent. That was the
3 reason he got into the dispute. He's not a guy that has a ten
4 of money and to hire this other lawyer and then on top of that
5 to pay a fee to be allowed to practice -- and we have that and
6 I disagree with that. I don't think that we should pay $350 a
7 year -- I've been associated with outside counsel from Seattle. He
8 came here and worked on a case and we went to the supreme
9 court and that type of thing, but $350 for every year for the
10 one case? Now, that's not right.
11 I mean, the supreme court cases, as you know, sometimes
12 are going to drag on for two or three or more years and he has
13 to pay that fee each year the case is pending according to our
14 rules. And that's not appropriate for that one case because
15 the client in, in Seattle chooses him as his lawyer and he
16 comes down here and associates with me. You know, I'm sitting
17 there just kind of making sure that he's following the rules
18 and that type of thing, but an extremely competent lawyer. A
19 great firm from Seattle type of thing. But to sit there and
20 force him to pay, you know, over a three year period of time
21 over $1,000 in bar fees for one case, I don't think is
22 appropriate for -- to do that.
23 MR. TURNER: Would we, then, be better not to have the
24 rule of local counsel and simply have them register, which
25
26 1 would probably be cheaper than hiring local counsel?
2 MR. CROWLEY: I think it would be so you get some sort
3 of, you get a cross-over there. So he pays the fee
4 but then he's not paying the local counsel also so that you
5 would, there would be a money savings there. But I don't know
6 if it's appropriate to charge -- what's our fee, $350 or
7 something now?
8 MR. CRUTAS: $350.
9 MR. CROWLEY: For practicing...
10 MR. CRUTAS: Are you advocating, though -- do you think
11 the local rules, local rules in Nevada Rules of Civil
12 Procedures are that easily absorbed and that generic that any
13 competent lawyer from any other jurisdiction can come in
14 we're talking litigation right now.
15 MR. CROWLEY: Yes.
16 MR. CRUTAS: And just come on in and maneuver the
17 labyrinth of court procedure and local practice without the
18 requirement of having association with local practice?
19 MR. CROWLEY: I think so because if you get around
20 enough you don't see that the practices are that much
21 different. I've got a set of the Rules of Civil Procedure for
22 the state of Washington, for the state of Utah. and when you
23 pull out the rules and look at them they're not even worded,
24 in many cases, any differently in terms of those types of
25 things.
26 Now, when you get to practice, though, if you're
2 talking about practicing, I wouldn't open the door as widely
2 as: Register here and I can come in every -- all the time. I
3 don't think that that's appropriate. I would favor something
4 similar to what they have, a certain number of cases over a
5 period of time. Because if you're going to come here and
6 practice law then get a license, that type of thing. But I
7 don't think you should shut somebody off.
8 And I was talking to John Schiegelmilch on the break
9 and I said that I have clients that I've had for many years,
10 ten, twelve, thirteen years you've had that same client, they
11 frankly, they don't want anybody else. You've got a
12 relationship with that person -- some of us it's a closer
13 relationship than with our spouse -- and they don't want to...
14 somebody took that the wrong way.
15 MS. BECKER: Would you like that stricken from the
16 public record?
17 MR. CROWLEY: Yes.
18 MR. WILSON: I don't know if that speaks to the
19 attorney/client relationship or the spousal.
20 MR. CROWLEY: Yeah, there you go. It could be the
21 spousal relationship. You spend 14 hours a day at your office
22 for too many years and sometimes your spouse and kids don't

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1 know who you are, but your clients sure do. They spend all
2 that time with you. But they don’t want to hire anybody else
3 and they really think it’s a nuisance, you know, to sit there
4 and associate with local counsel and then they pay all of
5 these extra fees, some hundreds of dollars, up into the
6 thousands if the case continues for a period of time.
7 They shouldn’t have to experience that. They don’t
8 want to give up their attorney. When you look at the
9 economics of it, though, sometimes you don’t have a choice.
10 If you’ve got to associate with local counsel and pay a bunch
11 of money, you say shoot, you know, here we are several
12 thousand dollars more. I might as well just hire the local
13 attorney than, rather than do the dual attorney expense there.
14 But I think that there’s -- you’ve got a lot of
15 information that you’ve taken in already that shows that
16 there’s a lot to be considered. But I think the regulation
17 stuff, I like what David had to say, that you submit yourself.
18 You know. I think when I appear in Saint Louis or Salt Lake or
19 Seattle or Spokane or somewhere, that’s it. Once you step in
20 there you submit yourself to the rules, their local rules of
21 discipline, professional responsibility. And you just sign
22 something that says that I submit to the jurisdiction of the
23 courts here. Should I be subject to discipline. And I don’t
24 think that’s that hard to take it that way.

1 MR. WILSON: Questions?
2 MR. CROWLEY: Thank you.
3 MR. REIS: I apologize if it’s not.
4 MR. WILSON: Your timing is impeccable.
5 MR. WILSON: You’re right on time, you don’t need to
6 apologize.
7 MR. REIS: Good. Here’s some written testimony that I
8 believe everyone has a copy of and I think we have enough
9 copies.
10 MR. WILSON: State your name, sir.
11 MR. REIS: Okay, it’s Robert Reis. I’m the vice
12 president for insurance operations of ALPS, Attorneys
13 Liability Protection Society. ALPS has, for 13 years
14 now, been the bar sponsored professional liability insurer for
15 lawyers in Nevada, as it is the bar sponsored professional
16 liability insurer for lawyers in ten other states and does
17 business in a total of 24 states in the jurisdiction.
18 I won’t read through the testimony that I hope you have
19 a copy of and you’ll have a chance to read other than to
20 highlight a few of things that we’ve said there and to invite
21 any questions that you may have. Let me also say we
22 appreciate the opportunity to be here. We bring a different

1 and you come from Nevada and they say. well, Nevada doesn’t
2 have reciprocity with us, we’re not going to give you that
3 license even though you’ve got your certificate of good
4 standing that you can walk in there with. And I don’t
5 necessarily believe we should force continued background
6 checks on people. If someone’s not a subject of discipline in
7 their own state and they went through the FBI background check
8 when they were admitted, the fingerprinting, the whole works.
9 why should we mandate that to somebody who’s never had any
10 problems and their own state bar gives you a certificate?
11 MS. BECKER: But many of the states don’t do the
12 background checks that Nevada does. That’s one of the
13 problems.
14 MR. CROWLEY: And that’s something that you would
15 definitely want to consider in granting reciprocity. But if
16 you know that Alabama does a background check and Arkansas
17 doesn’t, that’s something you would want to put your
18 registries. Say, Look, we’re sorry that your state doesn’t
19 do those things but we require those from attorneys that
20 appear in our courts and practice in our state. So if you
21 want to come here for this pro hac vice, you’ll have to submit
22 to a check, a background check, and you’ll have to pay the
23 $500 fee and whatever, you know, whatever an investigation
24 costs, and do that. But in the cases where we already have
1 perspective, I think, and I hope it's valuable to you.
2 Professional liability insurer, we've become extremely
3 interested in those claims and the costs associated with those
4 claims that are developed from multijurisdictional practice.
5 What we know is that it already happens. What I realized
6 yesterday when I started to run some statistics is that it
7 happens more in Nevada than it does in the other states in
8 which we do business. There may be a number of reasons for
9 that and we can speculate to that. I don't have facts to
10 really tell me why but I can say that it happens more.
11 It is of particular concern in a number of different
12 areas. One of the things that we started to look at, as we
13 always do and as insurers do, would be the claim statistics.
14 What are the dynamics of our claims? We all now calculate
15 those and we track those on an ABA system and that's why all
16 of us can report every five years, approximately, better
17 statistics than we have in the past. Unfortunately, we don't
18 report statistics that would lead us to believe what the
19 multi-jurisdictional component of that is but there are a few
20 things that we can look at.
21 One of things that I looked at among three of our
22 larger states is how many times the claims arise when we
23 defended an action outside of the jurisdiction or we had a
24 claimant -- or client if you will -- who was served from
25 South Carolina. Those states do not have the same draw from
26 personal injury claims from other jurisdictions from people
27 outside the jurisdiction. And as you see in the materials
28 it's over 13 percent in Nevada. Those 13 percent of claims
29 have accounted for more than 20 percent of the dollars spent.
30 So they have, on average, been more severe than other claims.
31 Compared to our other two large jurisdictions where our
32 penetration of lawyers in terms of the marketplace -- that is
33 the same percentage, roughly, of all of the lawyers in private
34 practice are insured as are in Nevada -- the percentage is
35 amazingly high. And I was very surprised at that. It's 3.7.
36 I think that the material suggests that Montana is 1.3, and
37 South Carolina. Those states do not have the same draw from
38 folks coming out of town as you do, obviously, but nonetheless
39 they border areas where folks tend to practice across state
40 lines.
41 MS. BECKER: Mr. Reis, let me see if I understand you
42 correctly. Those are claims against Nevada lawyers from
43 people out of the state of Nevada, correct?
44 MR. REIS: Correct. And they were either litigated
45 outside the state of Nevada or they are non-Nevada residents
46 who came here and they're litigating here. When we -- more
47 specifically to the Nevada claims I thought initially: Well,
48 this must be slips and falls in casinos. This has to be
49 personal injury claims from other jurisdictions from people
50 who flew in, fell, engaged a Nevada attorney, went back to
51 their jurisdiction, later had a malpractice claim.
52 In point of fact, only two of all of the cases we had
53 involved that particular scenario. Most of them are
54 transactional representation, which has to do with people who
55 want to do business across state lines and find it attractive
56 to do so in Nevada for a host of reasons and it involves a
57 host of different types of business relationships. That's
58 pretty much the claims data from what we can specifically
59 glean from multi-jurisdictional practice.
60 The other thing that I would highlight for you, and
61 this is incidental but I've listed in the materials a number
62 of things that have come to us in an underwriting fashion.
63 And this, perhaps, is more of an indication of currency. That
64 is, what is the current interest in multi-jurisdictional
65 practice and what are folks doing about it; vis-a-vis
66 attempting to practice or at least being insured for their
67 practice in Nevada. The incidents that I've listed in the
68 material all happened within the last six weeks.
69 It's not a catalog of what's happened in the last year.
70 It's our most recent memory of those applications which came
71 to us and which we declined. That is, we did not issue
72 policies for these individuals who sought coverage for a
73 variety of reasons, not the least of which was we didn't know
74 what the playing field was. They wanted to bring us an
75 exposure -- because they wanted to practice across state
76 lines -- that we could not qualify or quantify, and therefore
77 we could not set a rate for because we could not understand
78 what their practice dynamics would be.
79 In that particular scenario we really only have two
80 choices, we can pick the highest rate for any of the states in
81 which that group would practice or we can do what the medical
82 malpractice insurers did years ago and say we will charge you
83 a premium for each license you hold. So you'll pay four times
84 your malpractice premium if you hold licensure in four states,
85 or something like that, which is very onerous. It's not done
86 now but it is a concept that has been done and some insurers
87 may return to. I hope not. It is difficult to quantify and
88 qualify and therefore price and administer an insurance
89 program when folks do practice across state lines and there
90 are not uniform standards that we would expect them to adhere
91 to when they do practice.
92 The other thing I would highlight is attached to the
93 material on the fourth page -- I guess it's the fifth page --
94 our list of rates in terms of what we call the state
95 relatively. When we look at the practice of law in the
96 various jurisdictions in which we write insurance, one of the
97 most important factors and the factor that changes the premium
98 more than anything else because it is a factor applied at the
1. number of things, which it's very hard to isolate.
2. MR. WILSON: What's your -- I know we don't have a
3. refined statistical analysis as to cause and effect and all of
4. that stuff, but having said that, what do your instincts tell
5. you? What do you think the dynamic is? Why do you have a
6. higher incident rate in one part of the state and not in the
7. other? And you refer to transiency, meaning people --
8. MR. REIS: People coming in and out.
9. MR. WILSON: -- people coming in and out. Is that
10. lawyers coming in and out or clients coming in and out or
11. both? What -- I mean, I realize we're not talking from a
12. statistical base here, but you've been in this business a long
13. time, you have a judgment and additionally a sense of what the
14. dynamics of your business are. What do you think the causal
15. elements are that creates a higher rate as opposed to another
16. in Nevada?
17. MR. REIS: I mentioned it here because I think
18. multijurisdictional exposures play a large part of it.
19. MR. WILSON: Okay.
20. MR. REIS: One of the components is how many attorneys
21. in Nevada are involved with counsel from other states and a
22. common representation. The easiest example is local counsel
23. and defense scenario. We have a number of claims where
24. counsel operating locally as well as counsel from another city

1. are involved in the same malpractice issue. I think the fact
2. that clients are hard to track sometimes, that they bring a
3. case to an attorney in Las Vegas and then they leave to go
4. somewhere else and therefore client communication -- which is
5. a large number of claims problems, somewhere between 25 and 28
6. percent a year -- are a tremendous problem.
7. MR. WILSON: And then they get a malpractice case
8. because of inadequate communication with a client?
10. failure to follow the client's instructions -- which is tough
11. to do when the client is not available for communication
12. regularly. I would say that plays a large part. I think the
13. competition among the attorneys in Clark County may play a
14. part in that.
15. I don't think that the newness of practice, if you
16. will, or the lack of experience plays a part because
17. consistently on average most claims come from lawyers who have
18. been in practice 17 to 19 years. And that's a consistent
19. statistic throughout our book. It's consistent in Clark
20. County and the rest of Nevada. So I don't think that that
21. plays a part.
22. MR. CURTAS: You said a lot of it had to do with
23. transactional work as opposed to the basic slip and fall?
24. MR. REIS: Yes.
Mr. Reis: Bankruptcy, incorporating a business, estate planning to some extent, financial arrangements, leases, contracts, numbers of things. Those areas, by the way, obviously that folks don't think about pro hac vice because they're not going to be in front of a judge so they don't consider it.

Mr. Hardesty: Basically a deregulated area. Mr. Chairman? One of the questions that has developed in these hearings is concern that lawyers from outside the jurisdiction come here, practice here, perhaps commit malpractice to the citizens in this state. Do policies in other jurisdictions have exclusions that prevent coverage for practice in Nevada if you're not licensed here?

Mr. Reis: The policies themselves do not. We make it a habit of not insuring anyone when they give us an application unless they are licensed in the particular jurisdiction in which they send us an application from. In the state of Nevada we would not insure anyone who was not a member of the Nevada State Bar.

Mr. Hardesty: What about other companies, do you know?

Mr. Reis: There are certainly insurers out there who do know of some who would.

Ms. Becker: So a lawyer from out of state who had coverage based upon their licensure in that state would be covered for all claims regardless of where those claims were coming from and where the malpractice is alleged to have been territorially committed?

Mr. Reis: Anywhere in the world so long as the suit is brought in the United States, its possessions or Canada.

Mr. Wilson: So you cover the pro hac vice relationship?

Mr. Reis: Oh, yes.

Mr. Wilson: How about the local counsel who -- the Nevada counsel who brings an out-of-state counsel or out-of-state counsel selects Nevada local counsel on a pro hac vice basis, you insure both I gather?

Mr. Reis: Well, not necessarily. If we insured both firms certainly we would. If the pro hac vice attorney was brought in from another jurisdiction and other insurer insures that firm -- because insurance follows firms -- then they would defend that claim.

Mr. Wilson: But you would insure a Nevada counsel who admits an out-of-state lawyer pro hac?

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Mr. Wilson: But you would insure a Nevada counsel who admits an out-of-state lawyer pro hac?
think very possible. A little more homework, certainly.
but...
MS. BECKER: Is that one in four for all of the lawyers
in Nevada or one in four for lawyers who insure?
MR. REIS: Four percent. One out of the 25 of the ones
that we insure. We can't bring the statistics statewide...
MS. BECKER: Right. I just wanted to clarify.
MR. REIS: Because no insurer would ever share those
things.
MR. MOWBRAY: Mr. Reis, would you agree or disagree
with the statement in Nevada that if you practice in any zip
code other than 891XX -- which we'll say by definition is
Clark County -- you can expect, all other things being equal,
to have a 20 percent reduction in a premium over the national
average, where in Clark County you would expect to have a
surcharge of 20 percent more, for a differential of
approximately 40 percent, and that that difference is probably
due to multijurisdictional practice aspects?
MR. WILSON: That's a compound question.
MR. REIS: Most of the logic there...
MS. BECKER: Sustained.
MR. REIS: Mr. Chair, is it your direction that I
should try to elaborate to that?
MR. WILSON: You can answer it in two parts.
MR. REIS: I think it's basically an issue of the freedom of those in practice. The M word comes up and no one likes to hear that. How Oregon did and said a minute ago, every other English speaking nation requires it and no one wants to get into today.

MR. WILSON: You're saying if we register them and I'm not sure what you mean by standards--but if we register them you suggest some level of accountability, it's easier for you to ensure them and if they're registered and insured it creates a higher degree of protection for the public who's hiring the lawyer or who is affected by that lawyer's practice?

MR. WILSON: So you're saying if we register them--and I'm not sure what you mean by standards--but if we register them you suggest some level of accountability, it's easier for you to ensure them and if they're registered and insured it creates a higher degree of protection for the public who's hiring the lawyer or who is affected by that lawyer's practice?

MR. WILSON: That creates a higher level of protection for the Nevada client who is represented by or has engaged an out-of-state lawyer--

MR. WILSON: --if there's registration coupled with the requirement of insurance for the protection of the client?

MR. WILSON: The other thing, frankly--

MR. WILSON: And should we require as a condition of registration, that that out-of-state lawyer's insurance cover

MR. WILSON: Is that mandated by the bar or the supreme court?

MR. WILSON: What is that?

MR. REIS: Well, that means that if your insurance system like that has to be--in a system like that there has to be a residual market so that everyone can have insurance. There has to be. I mean, no one wants to make the decision as to whether or not that anyone practices to an insurer, nor should they. So everyone will have to take their fair share of the residual market. That will tend to, initially, drive prices up but if you follow the experience of professional liability fund in Oregon, which is a great one. Over time it is driven their assessments down because of the proactive work with the lawyers of the bar.

MR. WILSON: So they have a mandatory system?

MR. REIS: They do.

MR. WILSON: Is that mandated by the bar or the supreme court?

MR. WILSON: It was legislatively enacted.

MR. WILSON: I see, the legislature got involved. Very interesting.

MR. WILSON: The court complemented it with certain rules to allow those to function, to do a great deal of work without the necessary reporting constrictions, if you will, for ethics violations of other lawyers, which in the end I think helped their entire system.

MR. WILSON: You recommend the Oregon model?

MR. REIS: With some modifications that one would have to look at in today's world, particularly I think in Nevada.

But it's something to look at. It does work.

MS. SCHIEGELMILCH: One of my concerns is that if it was just a registration type of provision without really much requirement, come in, sign a piece of paper, say you're subjecting yourself to Nevada jurisdiction, Nevada courts. And then they're getting insured here in Nevada--they're opening an office, getting insured here in Nevada--you mentioned an adjacent state where there's one out of six attorneys getting sued. Wouldn't that almost by default say: Well, come on in, we're not going to do anything further? You're going to be subject to Nevada's discipline but we're not going to test your competency, we're not going to test your ability, we're not going to make those factors that make Nevada one in 25 versus one in six, and all of a sudden our rating goes from one in 25 to one in 6.

MR. REIS: Our corporate position is we think you can. I think, as I eluded to a minute ago, you run up against the question of what do you do for Nevada attorneys, vis-a-vis insurance, and that's not something that I think you want to get into today.

MR. WILSON: I don't know. Should we, shouldn't we and why?

MR. REIS: Our corporate position is we think you should consider it. South Dakota and Alaska and now I believe Ohio have instituted rules that require disclosure to clients.

Oregon requires that every attorney practicing in Oregon is a resident, being a member of the professional liability fund and therefore is insured at least for minimal limits. As I said a minute ago, every other English speaking nation requires it as a matter of course. You don't practice law in Scotland, for instance, unless you pay the fee and you are insured by it--

MR. WILSON: Why don't we?

MR. REIS: I think it's basically an issue of the freedoms of those in practice. The M word comes up--

MR. WILSON: Why don't we?

MR. WILSON: They have a mandatory system?

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1. to one in ten and we're paying double or triple the amount of
2. the insurance costs.
3. MR. REIS: In point of fact it's happening right now.
4. Attorneys from other states are looking around saying: Where
5. can we grow? Well, gee, Las Vegas has a nice growth area.
6. Can we hire one attorney who has a Nevada license and create
7. an office there and we will come back and forth from -- you
8. name the city -- and we in effect will practice in Nevada but
9. we'll have Young Charlie or Young Suzy sign the pleadings
10. because Suzy or Charlie are indeed Nevada lawyers.
11. MS. BECKER: Foolish.
12. MR. REIS: Well, yes, on the short side to be sure.
13. But that in effect is happening.
14. MR. HARDESTY: And that's a potential for driving up
15. claims?
16. MR. REIS: It certainly is.
17. MR. WILSON: How do you insure the Nevada lawyer doing
18. that?
19. MR. REIS: We don't. No, when we ask for disclosure of
20. all of the attorneys in the firm and we see there's a Nevada
21. firm and there's only one lawyer that has a Nevada license and
22. seven who have licenses from -- you pick a state -- we will
23. not insure that group as a Nevada group.
24. MR. WILSON: And do you insure the lawyers in the other

1. state to practice through --
2. MR. REIS: Generally they're coming from states where
3. we do not have a current present.
4. MR. WILSON: If you did -- let's assume hypothetically
5. that those lawyers were coming from a state that was in your
6. market, in essence which you do insure, what kind of judgment
7. would you make as to insuring those lawyer who are practicing
8. here in Nevada through the single Nevada lawyer that is, it's
9. a storefront operation?
10. MR. REIS: We generally insure firms that are
11. multi-state, we have several with offices in different states,
12. from their domicile state. In other words, their largest
13. office is in Anchorage. They would be paying Alaska's rates
14. even though they may have attorneys in Reno or Carson City who
15. are members of the firm.
16. MR. WILSON: But if there were a liability incurred in
17. Nevada through the resident Nevada lawyer, where the work
18. actually was done by the lawyer of this other state, you
19. would, would you insure --
20. MR. REIS: Absolutely.
21. MR. WILSON: -- that foreign lawyer if the work product
22. created a liability in Nevada?
23. MR. REIS: Right. The three lawyers in Nevada would be
24. paying roughly twice -- all other things being equal -- the

1. premium they would be paying in they were just a three lawyer
2. firm in Nevada as opposed to part of a group in Alaska.
3. MR. WILSON: So they would be insured and so too the
4. out-of-state lawyer practicing through the Nevada lawyer?
5. MR. REIS: Yes.
6. MR. WILSON: Because the rate would be paid by the
7. Nevada lawyer?
8. MR. REIS: Right. Or it would be paid by the firm.
9. MR. WILSON: Right, sure.
10. MS. BECKER: Presumably if you were insuring someone
11. who was maintaining a storefront operation in another state.
12. you would either decide not to insure them because of the
13. increased risks or you just increase the premiums saying if
14. that's the way you want to operate we know that the attorneys
15. are going to get sued because you're not really supervising
16. the Nevada proceedings the way we might like you too, then you
17. would have to pay a higher premium for that increased risk?
18. MR. REIS: Where the risk is acceptable we would
19. certainly do that. There's a level of risk that's
20. unacceptable and when we get to multiple offices, particularly
21. in multiple states, that level comes way down and it is
22. difficult for us to bill.
23. MR. WILSON: Do you have a sense of how often insurance
24. is not adequate where you have that situation. that you have

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COMMISSION ON MULTIJURISDICTIONAL PRACTICE - PUBLIC HEARING - OCTOBER 3, 2004

1. show up in claim statistics so I cannot talk about it in terms of insurability. In fact, in our whole inventory I think we found one claim that arose against an arbitrator or mediator.

2. MR. TURNER: Should that be treated differently?

3. MR. REIS: I don't believe it should be treated differently because I think you're going to see the dynamic change, and I think it's going to change for two factors.

4. One, the arbitrator or mediator is not always, we find, clear on who his or her client is, or are, and how we differentiate that. The communication patterns will be at the beginning of the relationship.

5. And secondly, the extent in our own experience with claims and in our experience with many of our attorneys, mediators tend to be overzealous with hammering of folks, and I am waiting for the day when a client is going to turn around and claim duress because they settled at a mediation, by force of a personality or what have you, without clearly understanding everything they signed away in the memorandum of agreements at the end of an arbitration mediation.

6. Whether or not that plays through in terms of crossing state lines and a multijurisdictional practice, it's very early to tell and I would rather doubt it because I don't know that anyone, any state or jurisdiction who's created or 101

PAGE 102

7. enforced any additional or separate rules, the mediators and arbitrators. But you can see it on the horizon way, way out.

8. MS. BECKER: Are you talking, actually talking about people being the arbitrator or mediator or participating in the mediation?

9. MR. TURNER: No, I was actually talking about arbitrators and mediators coming in who are lawyers from other states. I just wanted to know whether or not that had an impact on the insurability.

10. MR. REIS: It's also popular for the more well known mediators to invite you to their establishment, one of which I know is in Hawaii, so then where does the malpractice occur? I also think there are tremendous challenges for the store front operation -- I use that just to simplify where you have out-of-state lawyers doing the work and practicing through a nominal lawyer in Nevada or Clark County. Without quantifying it, it is safe to say that the degree of risk to the client in Nevada, where the work is done totally out of state, is higher.

11. MR. REIS: I think it is in those relationships and it really falls for a couple of things that we've noticed. The first is: How do the firms divide the work? Do they have some memorandum between them that says you're doing this and we're doing that? The second thing that often happens is if one firm is working on pleadings, for instance, the other may 102

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12. not calendar all of the due dates for the various pleadings. Lists, discovery, whatever that has to be accomplished. So that if one misses a date the other will be involved in the malpractice claim, invariably.

13. I also think there are tremendous challenges for communication with clients. Usually the local counsel or the counsel where the client is situated is responsible for communicating with clients but if that attorney is not doing all of the work then you have an internal breakdown if you will, in the joint venture.

14. MR. WILSON: So that also increases the risk to the client?

15. MR. REIS: I believe it does, significantly.

16. MR. WILSON: Do those factors also increase the risk of malpractice for the local Nevada lawyer?

17. MR. REIS: Absolutely. Invariably if one attorney is sued at all will be. And it's almost malpractice for the claims attorney or a malpractice case not to involve all counsel. Especially those working for -- or at least all counsel working for the parties at a loss.

18. MR. WILSON: The level of risk statistically increases for the Nevada lawyer who's merely the middleman, so to speak, and the risk to the client in Nevada is also increased.

19. MR. REIS: Absolutely.

PAGE 103

20. MR. WILSON: -- by the circumstances of that relationship you just described?

21. MR. REIS: Absolutely. And typically one can understand how that happens in human dynamics. Some corporation comes from wherever and says we need local counsel, we have general counsel. We have a huge firm. There are: Sit down, take it easy, send us a bill every once in awhile for 50 or 100 bucks. We only want you to sign pleadings, that's all we want you to do. Now, that's not wise but economics being what they are it's done. So there is a 104

22. MR. WILSON: Well, I ask because part of our charge is not just to recommend to the court rules that govern the conduct of lawyers, it's also to try and assess and provide for rules that will protect the public who hire the Nevada lawyers who operate under the conditions that they do. And for our purposes you're saying statistically that the risks are substantially high where the role of the Nevada lawyer is nominal, it vastly increases the risk to the Nevada client and it also vastly increases the risk of malpractice to the Nevada lawyer who's operating as nothing, really, but a conduit, and it may increase the risk of the lawyer who's really doing the work out of state.

23. MR. WILSON: Back to the storefront operation -- I use the word maverick or the storefront operation. Invariably if one attorney is doing the work and practicing through a nominal lawyer in Nevada or Clark County. Without quantifying it, it is safe to say that the degree of risk to the client in Nevada, where the work is done totally out of state, is higher. MR. REIS: I think it is in those relationships and it really falls for a couple of things that we've noticed. The first is: How do the firms divide the work? Do they have some memorandum between them that says you're doing this and we're doing that? The second thing that often happens is if one firm is working on pleadings, for instance, the other may 102

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29. MR. REIS: Absolutely.
MR. REIS: Right. There's one other component, as
those types of cases tend to be more weighty, more valuable,
the losses tend to be higher, the losses to clients tend to be
more significant.
MR. TURNER: How would you remedy that situation, in
the sense of would you require only Nevada counsel to be
involved where the client is always going to associate with
general counsel? How would you remedy that?
MR. REIS: I don't know that there is a remedy one can
immediately institute by making a rule. I think the rules are
there and I think the remedy is to simply say strongly in the
right case to the supreme court, if you will, or from the bar
counsel disciplinary office, that we hold a Nevada lawyer and
any out-of-state lawyers working on the case to the same
standard and it matters not whether you're here to sign a
pleading, deliver something to the court or only to talk to
the client, you're responsible for the case and responsible
for everything that goes on within it. That will be a bitter
toll for some and difficult for clients in some cases who may
want to keep their litigation costs down. But I think it's
absolutely necessary.
MR. WILSON: What recommendations would you give to
us -- this is a broad invitation -- but what recommendations
would you give to us that we should consider in formulating
the rules to the supreme court for the rules that they
should adopt governing the practice of law?
MR. REIS: I think what we as a company have to say is
really embodied in the last part of the statement that we've
given you. I would only suggest that our thought about
multijurisdictional practice is: It's here. Let's
acknowledge that it's here. Let's understand, I think, that
it needs to be regulated, that the regulation needs to be
uniform, that the level of corporation, in my own view,
between bars will have to increase dramatically if
multijurisdictional practices is going to be regulated to any
extent -- to an appropriate extent.
MR. WILSON: I don't understand that. Say that again.
MR. REIS: Well, I don't know how you can regulate
solely within Nevada the multijurisdictional practice. If you
did solely with different rules or rules that were
appreciably different than your neighbors or in other
states within which you may enter into a compact, I don't know
how successful you would be. Currently our impression is that
Nevada rules are pretty stringent about others coming here and
practicing, and yet we see a plethora of very, very inventive
ideas on how to work around that particular set of rules, you
know. You're graduating your first law school class in Las
Vegas. Is it this year?
1. relationship? That is, if this court were to provide rules of
management and standards, enforcement of standards where you
would have multi-distinct practice, an out-of-state firm with
an office here, multiple offices here, what rules should we
think about recommending how we define those standards
and how we enforce them and what obligations we impose not
just on the lawyers who live here but lawyers who are
practicing in some of those states where multi is confirmed.

2. MR. WILSON: I think, initially, a couple of things.
3. I've given a great deal of thought to this. Excellent question.
4. One of them is: What can you do with Rule 1.1? Should it
5. have a component that says I'm held to every standard in every
6. state in which I walk into or have a client and therefore in
7. Nevada I know, or have reasonably taken steps to have learned,
8. what I need to do to become competent in terms of following
9. the rules.

10. MR. REIS: So if that is to say that the lawyer in
11. Idaho or California or some other state who belongs to a firm
12. which is multijurisdictional is doing work in Nevada, that the
13. requirements for the admission of practice ought to meet
14. Nevada's standards?
15. MR. REIS: And I think that you can go further with
16. that and require CLEs, at least on an interim basis, for

everyone who wishes to come here so they have some minimal
knowledge of exactly --

3. MR. WILSON: Right. But in terms of the threshold
4. standard, what you're really saying is that the admission
5. standards in State X for that lawyer who resides there but
6. works for a Nevada client, is incomparable with the admission
7. standards here in Nevada and if it's not he doesn't
8. participate or if it is he does. And if it's not, how does he
9. correct that? That is to say, how does he satisfy the
10. competency question -- or she -- how do they satisfy the
11. competency question to qualify to practice on behalf of a
12. Nevada client from their office in Oregon?
13. MR. WILSON: I don't see any -- well, it's an
14. inconvenience but to me, for professionals who spend a great
15. deal of their lives studying the law, it should not be a
16. burden to show some initial competency in the rules and the
17. jurisdictions in which they wish to practice.

18. MR. WILSON: So that be would be a rule that provides a
19. threshold standard in the multijurisdictional practice --
20. MR. REIS: Right.
21. MR. WILSON: -- where the standards of admission
22. here -- reverse that -- the standards of admission there in
23. the foreign state would be comparable to the standards of
24. admission here coupled with compliance with the continuing

1 legal education requirement so that their on going legal
2 acumen is comparable to what's required here in Nevada?
3 MR. REIS: Mr. Chairman, I think I would turn that
4 around a little bit.
5 MR. WILSON: Okay.
6 MR. REIS: That's a quid pro quo type of arrangement in
7 some cases. And if I can digress for a second, if you take
8 Wyoming and Vermont for instance -- very diverse and people do
9 go from one to the other and I have a friend who did:
10 Wyoming says: We'll accept anyone on any terms that their
11 home state would accept one of our Wyoming attorneys. Well,
12 in Vermont you can read for the law, you do not have to go to
13 law school. You take a bar exam and you have to clerk for six
14 months, indentured servitude.
15 Wyoming says: Well, if you want to come from Vermont
16 here you must do the same things you would do in Vermont if
17 you went there from Wyoming but they have no clerkship
18 arrangement. They have no mentor teaching, if you will. They
19 have no system to do that. So how does this work?
20 What I would suggest and prefer, I guess -- or suggest
21 for your consideration, is: If you enter into interstate
22 compacts, which is where this issue seems to be going, that
23 all of those who join, say, our minimum standards, anyone who
24 practices around has to pass this proficiency test or

1 demonstrate proficiency or what have you, so that the lawyer
2 going to Oregon has to demonstrate some initial Oregon
3 proficiency, make some effort to have Oregon rules understood.
4 the same as an Oregon attorney would come here.
5 I think you would have the same results but I guess
6 it's a forward thinking thing at the beginning as opposed to a
7 rule that says if it's done there it can be done here or we
8 can accept what they do. Because invariably you get the
9 situation where one state says okay but I don't want a lawyer
10 accepted in Washington because I've seen what their
11 malpractice claims are and I don't want that, and so therefore
12 we really want to set a standard that we think is appropriate
13 for us in Nevada. I mean, in Nevada I would simply want to
14 ask a question or two about gaming, regulation, things of that
15 sort which is not known in other areas of the country and
16 people you find like to dabble in it a little bit.
17 MR. WILSON: What standards do we have in this state
18 for the practice of gaming law?
19 MR. REIS: Good question.
20 MS. BECKER: If they don't dabble more than once before
21 the gaming board.
22 MR. REIS: Right. Just because they don't dabble
23 before the gaming board, that doesn't mean they can't have a
24 dissatisfied client along the way.

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MR. REIS: I appreciate that. Thank you for the invitation. I would say your convening this particular group prior to the ABA's deliberation on the topic is, I think, a good one. Our perspective is open and available to you any time. We'll be happy to run anything we can with our claims. Our systems are better all the time and we can work more diligently on statistics as we divide and evaluate conflicts, which may be constructive. Sometimes it's not overly so. But we think it's certainly good discussion and would suggest to you we're happy, have always been and certainly are now, that ALPS is the carrier for lawyers in Nevada, endorsed by the state bar, and we hope that goes on and we're happy because we know what the playing field is and that's what we're interested in.

MR. WILSON: Any other questions?

MR. MOWBRAY: I would like to just thank you for coming down and tell Mr. Bento hello.

MR. REIS: I'll do that. Thank you very much.

MR. WILSON: Thank you. If we can think of anymore questions I guess we can reach you by phone, can't we?

MR. HAMILTON: I would like to just thank you for coming that ALPS is the carrier for lawyers in Nevada, endorsed by the state bar, and we hope that goes on and we're happy because we know what the playing field is and that's what we're interested in.

MR. WILSON: Any other questions?

MR. MOWBRAY: I would like to just thank you for coming down and tell Mr. Bento hello.

MR. REIS: I'll do that. Thank you very much.

MR. WILSON: Thank you. If we can think of anymore questions I guess we can reach you by phone, can't we?

MR. REIS: Absolutely, any time.

MR. WILSON: Thank you very much. Any other testimony?
1 procedural due process. If I get a complaint against me I
don't have to respond in three days, I can go find the file
and do whatever what I want to do in 30 days. This is a
reasonable time. Then it's screened within the next 30 days.

MR. HAMILTON: Well, I disagree but that's something-

MR. WILSON: We'll take your point. Thank you. Any

other testimony? Okay. Well, I think we'll close the hearing
and I gather lunch is on the cart. Let's recess.

PAGE 118
1, SUSAN E. THOMAS, CCR #655, do hereby certify that
the foregoing transcript, consisting of pages 1 through 118,
is true and correct to the best of my knowledge, skill and
ability.

DATED: This 11th of October, 2001.

SUSAN E. THOMAS, CCR #655.