McDONALD CARANO WILSON McCUNE
BERGIN FRANKOVICH & HICKS LLP
ATTORNEYS AT LAW

ROBERT L. McDONALD
JOHN J. McCUNE
THOMAS R.C. WILSON
LEO P. BERGIN
JOHN FRANKOVICH
LARRY R. HICKS
ALVIN J. HICKS
ROBERT E. ARMSTRONG
WILLIAM A.S. MAGRATH II
TIMOTHY E. ROWE
JAMES W. BRADSHAW
JOHN B. GALVIN
SYLVIA L. HARRISON
GEORGE F. OGILVIE III
JAMES C. GIUDICI
PAT LUNDVALL
SCOTT A. SWAIN
ANDREW P. GORDON
MATTHEW C. ADDISON
BRYAN R. CLARK
PAUL J. GEORGESON
BONNIE F. DRINKWATER
ANDREW S. GABRIEL

MIRANDA M. DU
ANTHONY D. GUENTHER
JEFF A. SILVESTRI
DAVID S. JENNINGS
DONALD G. MARTIN
SCOTT A. GRONEK
KRISTINA CHANDLER
TODD J. DRESSEL
BRETT A. AXELROD
PAUL DEYHLE
JOSEPH LAXAGUE

Please reply to: Reno

November 30, 2001

RECEIVED
NOV 30 2001
JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

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 ADKT 325

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.

241 RIDGE STREET, 4TH FLOOR
RENO, NEVADA 89501

P.O. BOX 2670, RENO, NEVADA 89505
(775) 788-2000 • FAX (775) 788-2020

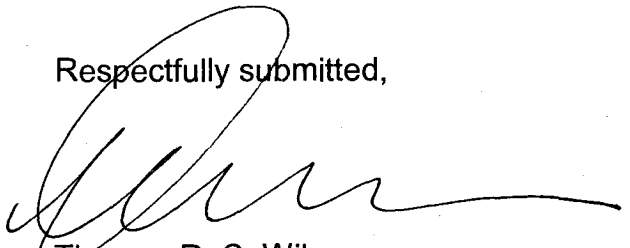
OF COUNSEL
DONALD L. CARANO
WILLIAM S. BOYD
CHARLES E. HUFF
HON JAMES GUINAN, RET.

2300 WEST SAHARA AVENUE
NO. 10, SUITE 1000
LAS VEGAS, NEVADA 89102
(702) 873-4100
FAX (702) 873-9966

01-2972

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,



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. Allf
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

ORIGINAL

FILED
NOV 30 2001
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

REPORT

OF THE

SUPREME COURT OF NEVADA

ADKT 325

COMMISSION ON

MULTIJURISDICTIONAL PRACTICE

November 2001

RECEIVED
NOV 30 2001
JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

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

school.

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 [Board of Governors]
Allf & Paustian
Las Vegas

John A. Curtas [President, Clark County Bar]
Kummer Kaempfer
Bonner & Renshaw
Las Vegas

Neil G. Galatz [Former Member, Board of Governors]
Las Vegas

M. Ann Morgan [Board of Bar Examiners]
Jones Vargas
Reno

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

John H. Mowbray [President, State Bar of Nevada]
Morse & Mowbray
Las Vegas

Bridget Robb Peck [Board of Governors; Past President, Washoe County Bar]
Beesley, Peck, Matteoni & Cossitt
Reno

Margo Piscevich [Delegate to ABA House of Delegates]
Piscevich & Fenner
Reno

John P. Schlegelmilch [Board of Governors]
Yerington

Gloria J. Sturman [President-Elect, State Bar of Nevada]
Edwards Hale Sturman
Atkin & Cushing, Ltd.
Las Vegas

William C. Turner Las Vegas	[Board of Governors]
Allen W. Kimbrough State Bar of Nevada Las Vegas	[Reporter (*ex officio*)]

III. Approach and Methodology

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 <u>all</u> 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 <u>except upon good cause shown</u>. 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 a 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 <u>as a firm</u> 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
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

ATTACHMENT A

PROPOSED REVISED AND NEW SUPREME COURT RULES

SCR 189. Unauthorized practice of law.

~~A lawyer shall not:~~

(a) ~~1.~~ A lawyer shall not [p]ractice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction. ~~;or~~

(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 [a]ssist 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 .

~~1~~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 ~~particular cause pending 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 ~~2~~3, to appear as counsel in that cause, provided that ~~an~~ a competent, active member of the State Bar ~~if~~ 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.

~~2~~3. *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 officerwhere 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~~ havethe discretion to waive the $350.00 original fee pursuant to subsection ~~2~~3(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.

~~3~~4. *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; (g) 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~~ 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~~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.

~~4~~5. ********

~~5~~6. *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.

~~6~~7. *********

~~7~~8. *********

~~8~~9. *********

~~9~~10. *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~~ Supreme ~~court~~Court of Nevada.

~~10~~11. *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~~ Defined Proceeding is filed, with the county clerk of each county, and with the clerk of the ~~supreme~~ Supreme ~~court~~Court of Nevada.

~~11~~12. ********

~~12~~13. *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 if 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 ~~if~~ 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.

~~13~~14. *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.

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 the bar 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

1 APPEARANCES

2 MEMBERS:

3 Mr. Thomas R.C. Wilson, Chairman

4 The Honorable Nancy A. Becker

5 The Honorable Jack B. Ames

6 The Honorable James W. Hardesty

7 The Honorable Ronald D. Parraguirre

8 Mr. John H. Mowbray

9 Ms. M. Ann Morgan

10 Mr. Rob Bare, Bar Counsel

11 Ms. Gloria J. Sturman

12 Ms. Bridget Robb Peck

13 Mr. Matthew W. Addison

14 Mr. Allen Kimbrough, Executive Director

15

16 GUEST SPEAKERS:

17 Mr. Richard Barrows, Wilson & Barrows

18 Ms. Win Smith, Elko County Clerk's Office

19

20

21

22

23

24

25

1 CHAIRMAN WILSON: Let's call the meeting to
2 order, get down to work. I am Spike Wilson. I'm supposed
3 to chair this hearing. Let's go around and introduce
4 ourselves.
5 JUDGE AMES: I'm Jack Ames from Elko.
6 JUDGE HARDESTY: Jim Hardesty from Reno.
7 MS. MORGAN: Ann Morgan from Reno.
8 MR. MOWBRAY: John Mowbray, formerly from Carson
9 City, presently in Las Vegas.
10 MR. BARE: Good morning, Rob Bare from the State
11 Bar.
12 JUDGE PARRAGUIRRE: Ron Parraguirre from Las
13 Vegas.
14 MS. STURMAN: Gloria Sturman, Las Vegas.
15 JUSTICE BECKER: Nancy Becker, Las Vegas.
16 MS. PECK: Bridget Peck, Reno.
17 MR. ADDISON: Matt Addison, Reno.
18 MR. KIMBROUGH: Allen Kimbrough, State Bar, Las
19 Vegas.
20 CHAIRMAN WILSON: Thank you all for being here.
21 You are required, obviously, to fulfill your obligation of
22 the Supreme Court's order creating this commission to have
23 public hearings to inquire into the subject of
24 multijurisdictional practice by lawyers and to render a
25 report to the Court for its consideration.

1 We have people who are going to appear, speak
2 this morning.
3 JUDGE AMES: Mr. Barrows is here and Ms. Smith is
4 here.
5 CHAIRMAN WILSON: Great. Who would like to go
6 first? This is going to be rather informal, more
7 conversational than anything else, I hope.
8 MR. RICHARD BARROWS: Mr. Chairman, members of
9 the commission, my name is Richard Barrows. I have
10 practiced, had a civil practice in Elko for about 28 years
11 I have practiced in Elko since 1973.
12 This subject today has been an interest of
13 mine for a long time, maybe for reasons other than a lot of
14 members of the bar.
15 I wish to talk about only one aspect of
16 proposed Rule 5.5, and that is the association of foreign
17 counsel with legal counsel, which I guess is in proposed
18 Rule 5.5(b)(3)(iii).
19 For years and years and years, being a general
20 practitioner in a rural area, if a specialized matter came
21 along, whether it be a nonlitigation transaction or
22 litigation, being a general practitioner, if the matter
23 warranted it, or if the client -- and/or if the client
24 could afford it, I affirmatively sought out specialized
25 counsel to assist me in the matter.

1 In some of those instances, the counsel that I
2 associated with was out of state. And I always operated
3 under what may or may not be -- probably is -- the
4 misconception that out-of-state counsel was in full
5 compliance with the law, simply associating with me as
6 licensed Nevada lawyer.
7 That is until the day that I heard about the
8 Birbrower case, which I hope is an aberration, I actually
9 haven't followed the developments since it.
10 But I do know that one of the arguments made
11 in the Birbrower case was that the New York counsel, if the
12 New York counsel had associated with local counsel, then
13 the New York counsel would not have been engaging in the
14 unlawful practice of law.
15 And the Court said in Footnote 3 of Birbrower
16 case that that's irrelevant, even if the counsel at issue
17 had associated with local counsel, the statute and the
18 Court rule doesn't have that exception. It simply says
19 unlicensed, unauthorized practice of law, period.
20 I believe there ought to be an implied
21 exception for association with local counsel, but whether
22 there is an implied exception or not -- apparently there
23 isn't -- I would support Exception 5.5(b)(3)(iii), which
24 says that the one exception to the unauthorized practice of
25 law is where the lawyer is associated in a particular

1 matter with a lawyer admitted to practice in this
2 jurisdiction.
3 And I read some proposed language from -- I
4 believe it must be Neil Galatz -- that adds, "and is
5 performing work on an occasional basis and not as a regular
6 or repetitive course of practice."
7 That certainly makes sense to me. I would
8 urge this commission to urge the Supreme Court to adopt
9 that exception. And I would hope that there would be some
10 common sense to it, not make it onerous, like pro hac vice,
11 where you have got to go through an application and plead
12 with the State Bar to allow it and pay $350 a year, pay to
13 file a motion in court, et cetera.
14 In many of those transactions there is no
15 Court to file your application in. And I would -- at least
16 where there is no pending arbitration or mediation, it
17 seems to me that simply on an informal basis the rule ought
18 to be that if foreign counsel is associating with local
19 licensed counsel, then that is not the unauthorized
20 practice of law.
21 CHAIRMAN WILSON: Are you talking in a context
22 where you are not appearing in court in a matter, or are
23 you talking with about consulting with specialized counsel
24 who is working with you in Nevada for a Nevada client?
25 MR. BARROWS: Absolutely.

1 CHAIRMAN WILSON: On that kind of issue?

2 MR. BARROWS: Yes. I would submit, unfortunately,

3 the way the law has been written for many years, there is

4 just a wholesale unauthorized practice of law by foreign

5 counsel, by out-of-state counsel, because it simply --

6 there are no exceptions in the rule or the statute.

7 MR. MOWBRAY: Richard, would you propose maybe a

8 registration system? You mentioned that you would not be

9 in favor of going through the same mechanism under Supreme

10 Court Rule 42 with filing the petition with the State Bar,

11 then going through the motion practice.

12 Have you thought about that, how you would

13 implement it?

14 MR. BARROWS: I don't know why it would be -- you

15 know, I still believe that the legal profession by and

16 large is honorable. I don't know why there needs to be a

17 registration process, at least where there is no formal

18 arbitration or pending mediation.

19 I simply would like a system where, as the

20 Nevada licensed counsel, it is up to me to know when there

21 has to be a formal application with the State Bar or

22 anyone. And if there is no pending court proceeding,

23 administrative proceeding, arbitration or mediation, I

24 would think merely associating with me should be enough.

25 JUDGE HARDESTY: What about a notification, at

1 least some way to regulate or police? The concern I would
2 have is that, outside of yourself, the Bar would not know
3 in the case of subsequent Supreme Court Rule 42
4 applications, that this lawyer had been a frequent
5 participant in matters involving yourself.
6 Should there at least be a notification
7 process that you have associated out-of-state counsel on a
8 matter?
9 MR. BARROWS: I came prepared to answer that
10 question affirmatively as a fallback position. I would
11 prefer no formal process. But at worst, I guess I should
12 phrase it, a mere notification to the State Bar as opposed
13 to an application and a fee, I think, would be appropriate.
14 JUDGE HARDESTY: There are circumstances, it seems
15 to me, where some local counsel might not be as honorable
16 and might take advantage of the opportunity to have
17 out-of-state counsel handle your matters on a regular
18 basis.
19 Is that something we should be concerned with?
20 MR. BARROWS: I suspect, in reality, that is
21 happening a lot, probably not in the rural areas.
22 CHAIRMAN WILSON: Judge Ames?
23 JUDGE AMES: One of the purposes of being
24 licensed, of course, is to protect the public. And so we
25 need that mechanism in place, also, when these attorneys

1 come in, if they are actively representing a client in
2 Nevada, then, if they do something that the client -- that
3 gives them a cause of action back against the attorney,
4 what do we have to protect the client, the public?
5 MR. BARROWS: Well, if I understand your question,
6 what I am proposing is whether it be, let's say, a large
7 leaking underground storage tank clean-up process that I
8 certainly am not familiar enough with that type of law,
9 where there is no lawsuit pending, or whether there is a
10 huge real estate transaction, there is no pending
11 proceeding to file in.
12 If there is malpractice, I would think, first
13 of all, that I should be actively involved in the matter,
14 rather than just -- I think I read a comment in one of
15 these documents -- I should not act as a mere conduit, I
16 should actually be representing my client, making sure that
17 Nevada law and procedure is complied with.
18 And both me, as Nevada licensed counsel, and
19 the out-of-state counsel should be liable to the client for
20 malpractice, if it happens.
21 CHAIRMAN WILSON: Rob?
22 MR. BARE: Thank you, Mr. Chairman. I just want
23 to take an opportunity to kind of put Mr. Barrows' comments
24 in context, if I could. Perhaps you would appreciate a
25 little background on this. This is one of the main issues.

1 We get a lot of calls at the State Bar on this.

2 Normally, what happens is we get a call from a

3 Nevada licensed attorney who is physically present at some

4 sort of a prelitigation proceeding, something like a

5 mediation or arbitration or even a deposition. And that

6 Nevada lawyer calls the bar, says, Hey, bar counsel, what

7 am I supposed to do here today? Opposing counsel is not

8 licensed in the state.

9 Now, what we tell that lawyer is, in

10 prelitigation matters, such as mediation and arbitrations,

11 if it's the practice of law, which it is when opposing

12 counsel shows up representing the opposing party, you have

13 got to have a Nevada lawyer handle that.

14 There is no mechanism in the rules to allow

15 for that practice of law by the out-of-state lawyer.

16 That's really the legal situation we are in. I mean, just

17 to be clear, what we have here is the practice of law by an

18 out-of-state attorney.

19 In order to have an authorized practice of law

20 by an out-of-state attorney in our state, we have Supreme

21 Court Rule 42.

22 If you look at the technicalities of Rule 42,

23 it requires, as a threshold matter, that there be a matter

24 pending in a court of this state before you can even file a

25 pro hac vice petition.

1 That means if you don't have a matter pending,
2 things like arbitrations, mediations, such, there is no
3 mechanism legally in our state to allow for a blessing, an
4 authorization, of that practice of law by the out-of-state
5 attorney.
6 And I will tell you, we have looked at what
7 other states do, and there are no states -- we have not
8 found, and I have sent -- in fact, I sent a letter to all
9 the other bar counsel, all the other 49 bar counsel, and I
10 asked them to provide to me any rule they have in their
11 state that allows for an admission of out-of-state attorney
12 on a prelitigation basis, at things like mediation,
13 arbitration.
14 Nobody has a rule. There is no rule allowing
15 for this. What's happened in practical effect over time,
16 and I know what happens even more and more every day, is
17 just what Mr. Barrows is suggesting. What happens is you
18 have a State licensed attorney present and essentially
19 handling the legal matter.
20 What does the out-of-state attorney do? Well,
21 what I like to say to people is, if that attorney is
22 limiting him or herself to a consultation, you know, they
23 are basically a consultant for the Nevada lawyer, the
24 Nevada licensed lawyer who's present for the proceeding and
25 handles it.

1 That's pretty much what we allow at this
2 point. We don't allow solo practice by the out-of-state
3 counsel with things like mediations and arbitrations.
4 JUSTICE BECKER: I think to some extent that has
5 come to the forefront because I think the Bar is now
6 interpreting unauthorized practice of law in a manner that
7 was never historically considered when those rules were
8 enacted.
9 I think the few cases we have in this make it
10 clear that unauthorized -- the reason the Rule 42 relates
11 to court proceedings is because it was never considered to
12 be the unauthorized practice of law for someone to
13 represent their client in an arbitration or a mediation
14 proceeding, because you can be represented by anyone at an
15 arbitration or mediation or administrative proceeding
16 federally.
17 You are not required to have an attorney, and
18 there is no bar in those proceedings from having someone
19 other than an attorney represent you.
20 And if any person off the street can be your
21 spokesperson, then it can't be the unauthorized practice of
22 law if your spokesperson is an attorney. And that's
23 traditionally what was happening.
24 The problem is that arbitrations or mediations
25 or administrative hearings were not a norm 30 or 40 years

1 ago, but they are a norm now. They are much more complex.
2 They are much more like a court proceeding, or at least a
3 prelitigation method of resolution.
4 So while it may be appropriate for us to now
5 rethink that as an unauthorized practice of law, I think,
6 by the same token, I don't think it's anybody's intent to
7 take what was intended to be informal proceedings and blow
8 them up into a trial proportion by our use of the
9 unauthorized practice of law.
10 I think our concern is the protection of the
11 public and the people. I don't think that asking a local
12 attorney, saying, you know, I need somebody with a little
13 more expertise and there really isn't anyone in Nevada that
14 I feel comfortable with for copyright infringement or toxic
15 waste massive litigation, so I would like to hire -- I, the
16 attorney, want to hire out-of-state counsel to associate
17 with me to advise me. It is still my client.
18 That out-of-state attorney is being hired by
19 you, Mr. Barrows, to give you counsel. And the question
20 now becomes, is that a different situation when they are
21 not the ones who sign the retainer agreement with your
22 client? Your client pays you and doesn't pay them. You
23 are responsible for paying them. I still don't think
24 that's the unauthorized practice of law.
25 JUDGE HARDESTY: Isn't what he's doing is having

1 the client pay the associated counsel?

2 MR. BARROWS: I am sure it could occur that way.

3 I am suggesting in my instance, we are co-counsel. There

4 is a separate retainer agreement between out-of-state

5 counsel and the client.

6 JUSTICE BECKER: In that case I think it would be

7 the unauthorized practice of law, whether you are

8 associated or not, because they are co-counsel. That's the

9 difference between you hiring someone to advise you and

10 them actually having a client in state and practicing in

11 state.

12 JUDGE HARDESTY: When I was in practice that was

13 really the practice 90 percent of time. You were bringing

14 in co-counsel and co-counsel was associating in the case.

15 MR. ADDISON: In fact, working on the matter,

16 negotiations and everything else.

17 MS. STURMAN: As a little historical background

18 for the committee that amended the Rule 42 few years ago,

19 which I chaired, we looked at this very thing, thought

20 about extending -- asking the Court to extend it a little

21 further.

22 We specifically didn't because we were

23 contacted by a lot of transactional attorneys and

24 government attorneys, and the problem they raised for us

25 and that we just ran into an impasse, decided not to go any

1 further with was, particularly in the state of Nevada,
2 there is a dearth of, for example, bonding counsel for
3 governmental entities.
4 They contacted us and said, Please don't do
5 what you are thinking about doing. Because we were going
6 to take it beyond. We thought it should apply to
7 transactional, we thought it should apply to anybody that
8 sets foot in the state of Nevada. We actually thought under
9 Birbrower that we needed to do that.
10 And they said, You are just going to handicap
11 us, you're going to tie our hands, we won't be able to get
12 bonding. Our only bonding counsel are these people from
13 New York, San Francisco and Denver. There is no bonding
14 counsel in the state of Nevada. We are going to have to
15 travel to them because they will be afraid to come here.
16 It will be impossible for us to do this. You are going to
17 raise our costs. It's going to substantially handicap the
18 ability of -- at the time the big problem was the airport,
19 going through a big expansion, they were bringing people in
20 on a regular basis for huge hundreds of millions of dollars
21 in bonding. They said, Please don't do this to us. And it
22 was attorneys from governmental entities that were calling
23 us.
24 And so it's a little bit different probably
25 from what Mr. Barrows is talking about. Historically, that

1 is why, when we amended Rule 42, we didn't go the extra
2 step, just the philosophical problem that it presented.
3 We decided at that point that the immediate
4 problem for us was all these problems with the people
5 coming in on construction defect, that was really where we
6 wanted to address things, where people were dealing
7 hands-on with individuals and affecting individuals'
8 rights.
9 I think we just decided the big government
10 entities can protect themselves, if they are hiring these
11 big, flashy lawyers out of New York to do their bonding.
12 Maybe we don't want to go there. We are more concerned
13 about our consumers, protecting them. That is why we only
14 went as far as we did.
15 But this committee might want to explore that
16 a little further, hopefully we'll have some more testimony,
17 particularly in Southern Nevada, on how this would affect
18 that type of practice.
19 MS. MORGAN: Richard, have you had any discussion
20 with other practitioners in Elko about this subject?
21 MR. BARROWS: I have not.
22 MS. MORGAN: Have you heard whether there is any
23 other concern by anybody except you in this area?
24 MR. BARROWS: I'm sorry, I have not. I guess my
25 general impression is a lot of people want to do it

1 themselves, and whether or not that is appropriate under
2 the rules or not, I don't know. But I am not an expert in
3 very much, I can guarantee you that.
4 MS. MORGAN: One follow-up question. Is it your
5 observation in transactions that you find yourself dealing
6 with out-of-state attorneys, where there is not a local
7 presence on the other side?
8 MR. BARROWS: Certainly. Although we don't, in
9 Northeastern Nevada, other than the mines, which are sort
10 of their own islands, we don't really have a lot of
11 transactions that would warrant out-of-state counsel.
12 But I am currently involved in one fairly
13 large transaction in which the counsel on the other side is
14 from out of state. I haven't raised the issue and
15 certainly, I guess, wouldn't, simply out of courtesy.
16 But it seems to me that that out-of-state
17 counsel who is engaging in a huge real estate transaction
18 without local counsel is engaging in the unauthorized
19 practice of law.
20 JUDGE HARDESTY: That's the other side of the
21 coin. You are a local lawyer and you are dealing with
22 maybe a co-counsel situation or a lawyer from out of state
23 and that lawyer is engaging in behavior and conduct which
24 creates a problem with the transaction, which creates a
25 problem ethically. How do you deal with that situation?

1 I confronted that when I was practicing law
2 and it is extremely frustrating. And there is virtually no
3 control other than to call the Bar and ask for some relief,
4 which can really complicate -- especially in transactional
5 matters -- your own client's situation.
6 If you are involved in a major real estate
7 deal, calling the Bar and asking for relief is not the best
8 approach in blowing a million dollar or $2 million
9 transaction.
10 MS. PECK: Just a follow-up comment to what Judge
11 Hardesty just said, it is my experience that in those types
12 of circumstances where there is no pro hac vice application
13 on file that a call to the Bar is not effective.
14 They take the position they don't have
15 jurisdiction and will then refer that matter to the state
16 in which the attorney practices.
17 But again, that gives your local consumer and
18 your local attorneys no real form of relief because you
19 don't have anybody locally that you can deal with.
20 JUDGE HARDESTY: I think it's an issue this
21 committee needs to address. You just have no way -- local
22 counsel have no way of dealing with a problem where
23 out-of-state counsel is appearing, as you have described.
24 CHAIRMAN WILSON: It looks like it comes up two
25 ways: The person with whom you're having a transaction has

1 out-of-state counsel, perhaps not local counsel, or either
2 of those; or, in your own case, where you are associating,
3 although there is a separate contract with your client and
4 the out-of-state lawyer.
5 I guess the question is, how do you make it
6 work?
7 MR. BARROWS: Well, in the -- in the case of the
8 out-of-state counsel who has not associated, that is a
9 problem that needs to be dealt with, and I simply haven't
10 viewed it as my function to deal with it.
11 I am simply here on, I suppose, the selfish
12 grounds of not wanting to lure an expert out-of-state
13 counsel into Nevada to help me and have Birbrower hit them
14 in the face and them not be able to collect their fee.
15 And I guess, in closing, I I would like to see
16 a very broad definition of practice of law, with the
17 exceptions that are suggested in Proposed Rule 5.5, rather
18 than a very narrow definition of practice of law, so that
19 you don't get to the issue.
20 And I thank you for coming all the way out to
21 Elko to hear the rural perspective. I thank you for
22 letting me address you.
23 CHAIRMAN WILSON: That's helpful, thanks.
24 JUDGE HARDESTY: On the bond matters, I think it
25 might be worthwhile to check into this. My experience is

1 that where they hire out-of-state bond counsel, all of
2 these situations are worked out with civil deputies from
3 those agencies. It's very much like --
4 MS. STURMAN: It may be that you can consider
5 that an association, that would be adequate, if we adopt
6 the safe harbor proposed in 5.5.
7 JUDGE HARDESTY: Unless they are acting
8 independently.
9 JUSTICE BECKER: They do it both ways. And it
10 isn't just the local government. It is also our State
11 Treasurer who has bond counsel out of state that they
12 consult with frequently.
13 And it goes beyond that. I think that in the
14 materials we have been presented, we need to remember that
15 clients have a right to ask someone from out of state to
16 represent them.
17 The issue is, if there is a problem with that
18 out-of-state counsel, how do we regulate that? How do we
19 get jurisdiction over them?
20 MS. STURMAN: I would like to invite somebody to
21 come and tell us -- I don't understand a lot about
22 internally how they handle it. I think your question is
23 very valid.
24 Maybe we could ask, see if somebody would be
25 willing to testify in Reno or Las Vegas.

1 JUDGE HARDESTY: For example, anything from S.B.A.
2 loans or I.R.B.'s, all of those things are involving
3 out-of-state bond counsel opinions on these bonds.
4 JUSTICE BECKER: It goes beyond that. I'm sure
5 that the major corporations use out-of-state counsel as
6 well as local counsel. I would presume that IGT doesn't
7 provide -- consult only with in-house counsel, that you
8 consult with experts that are out of state, if necessary,
9 although with gaming most of the experts are in state.
10 But, you know, we have major corporations and
11 you have the issue of the corporation counsels.
12 And I think that again, you know, the
13 unauthorized practice of law, if I say this person is my
14 agent, they are my agent. If I have authorized them to be
15 my agent, that's always been considered not to be the
16 unauthorized practice of law.
17 The fact that they happen to also be an
18 attorney is irrelevant. I have designated them as my agent
19 for this transaction and lease negotiation.
20 And that is where we need to come up with up
21 with some additional protections.
22 But I honestly don't want to change the
23 situation where the client, knowing that this is an
24 out-of-state person, doesn't have the right to say, look, I
25 like this person, this is who's negotiated all of our other

1 franchise leases, this is who we use to negotiate our
2 franchise leases.
3 I have no doubt that McDonald's Corporation,
4 when it opens a new franchise, doesn't necessarily use
5 local counsel, although the person who is opening, buying
6 the franchise, probably has local counsel.
7 But I would bet that there is corporate counsel
8 for McDonald's corporate headquarters that is negotiating
9 those.
10 CHAIRMAN WILSON: Which would be an in-house
11 counsel situation, as opposed to a lawyer who is
12 independent but is being engaged from out of state.
13 You know, I guess the challenge is how would
14 you make the system work and preserve a degree of
15 accountability. It has to work in the practical context of
16 business and commerce and everything else.
17 How do you make people accountable in a way
18 that is workable?
19 JUDGE HARDESTY: Rob, are you pursuing complaints
20 in which a lawyer has called up and said, hey, I have this
21 out-of-state counsel I am dealing with on a transactional
22 matter and --
23 MR. BARE: Most of that, Judge, is handled
24 relatively informally be either me calling or writing a
25 letter to the out-of-state counsel advising that they are

1 engaged in the unauthorized practice of law, having them
2 associate with Nevada counsel.
3 I mean, it's got to the point that it's a form
4 letter that tells them that, okay.
5 JUDGE HARDESTY: Are they responsive?
6 MR. BARE: Sometimes they are, sometimes they
7 aren't. Let me just tell you the cases that stick out in
8 my head are ones where there is a lot of out-of-state
9 practice and it's unauthorized, there is no Nevada lawyer
10 involved.
11 When we initially get involved, I think the
12 majority position that the out-of-state lawyer has is,
13 Well, leave me alone. Who the hell are you? You don't
14 have any jurisdiction over me. I am from some other state.
15 If you have a problem, deal with my bar counsel, deal with
16 my state, deal with my supreme court.
17 And I say that because I had a case in Las
18 Vegas -- I guess it is now about a year-and-a-half ago --
19 where an out-of-state lawyer showed up and opened up a real
20 nice law office and started practicing construction defect
21 law and just really started practicing.
22 His way of doing business was more or less
23 just to try to settle everything. If the matter proceeded
24 on to court, he would just file a Rule 42 petition in every
25 case that proceeded to court. He tried to limit the amount

1 of cases that went to court. That was how he was going to
2 practice law.
3 In that case, it was one of the few cases
4 where we had to actually start proceedings, disciplinary
5 proceedings, concerning an out-of-state lawyer.
6 When we did that, the out-of-state lawyer's
7 first response to us was, well, he filed a motion to
8 dismiss for lack of jurisdiction.
9 Now, Supreme Court Rule 99 does say that as
10 far as disciplinary jurisdiction is concerned that we have
11 jurisdiction over, of course, all Nevada licensed lawyers
12 and any other lawyer that is practicing within the physical
13 borders of the state. We have disciplinary jurisdiction
14 pursuant to Rule 99. So I used that rule, of course, in
15 that case and in other cases to pursue the matter.
16 So anyway, interestingly enough -- and I'll
17 try to make this short. Justice Becker, I think, heard
18 this argument recently, too, when we were in the front of
19 the Court.
20 But that lawyer that I am talking about
21 initially just said, hey, send me all the letters you want,
22 I am just going to practice, you don't have any
23 jurisdiction over me, the hell with you.
24 And then, when he filed his motion to dismiss
25 our proceedings and he started getting serious, he went out

1 and hired a prominent Nevada lawyer to represent him.

2 This lawyer sat him down and said, look, if

3 the State of Nevada disciplines you, there is such a thing

4 known as reciprocal discipline where your state may impose

5 the same discipline that has been imposed upon you in

6 Nevada. So you run a risk of losing your license in your

7 home state if that occurs.

8 When that lawyer received that advice from his

9 learned Nevada counsel, boy, did his tune change then. And

10 we ended up having that lawyer close the law practice; he

11 doesn't have his practice anymore.

12 So that's my main experience because that is

13 the one case that really proceeded on and got serious.

14 But I just tell you, in general terms, the

15 out-of-state counsel tend to not respect our letters and

16 our calls until we start to point out the fact that we have

17 jurisdiction. And when we point that out, start talking in

18 terms of reciprocal discipline, then things start to

19 happen.

20 I will tell you that most cases when we get

21 involved what happens, as a practical matter, is the

22 out-of-state lawyer simply associates with a Nevada lawyer

23 and things are handled from there.

24 And that's important. I mean, Judge Ames

25 talked about accountability here. That is really the

1 problem for us at the State Bar. If you have out-of-state
2 lawyers practicing, whether it's prelitigation or not, we
3 have got to have some accountability as to what we are
4 going to do when their client -- by the way, guess where
5 their client files the bar complaint? They don't file it
6 in Oklahoma, Kansas, someplace, they file it in my office,
7 right. So that really is an important aspect.
8 MR. MOWBRAY: Mr. Barrows' comments bring up
9 another topic. That is, the full faith and credit. In
10 terms of different jurisdictions, this is a big issue.
11 When we appeared, the Nevada delegation, at
12 the ABA session in Chicago on August 5, we were asked
13 several questions concerning would we give full faith and
14 credit to another state's disciplinary proceeding and do we
15 do the same thing.
16 MS. STURMAN: Another question they wanted to
17 know was if, for example, under pro hac vice, if a
18 California attorney who goes to an unlicensed --
19 unaccredited law school in California, but is licensed in
20 California, under our pro hac vice provisions, do we accept
21 the fact that they can work in Nevada pro hac vice, even
22 though they went to an unaccredited school, where they
23 would have to go through a functional equivalency if they
24 wanted to take our bar?
25 So it's not just discipline, it's admissions.

1 While they don't want us to give reciprocity, necessarily,
2 they want us, under the pro hace vice provision, to give
3 full faith and credit to the fact somebody is admitted,
4 even though they wouldn't be qualified in Nevada. So it's
5 broader.
6 CHAIRMAN WILSON: Is that a good thing or a bad
7 thing?
8 MS. STURMAN: I don't believe we discriminate in
9 pro hac vice.
10 CHAIRMAN WILSON: Wait a minute. What should the
11 law be? We are going to make recommendations as to what
12 the law or the rule ought to be, and the question is going
13 to be, what should it be and why.
14 MS. STURMAN: John?
15 MR. MOWBRAY: Well, I think we have to take a
16 look at the full faith and credit issue. If all the states
17 are willing to give full faith and credit to the other
18 jurisdictions' disciplinary proceedings, that's one thing.
19 But as a practical matter I am not sure that that's the
20 case.
21 And I say this because of the February hearing
22 of the M.J.D. commission by the ABA in San Diego. Bar
23 counsel from a southeastern jurisdiction proposed a
24 hypothetical to his California counterpart and said -- my
25 recollection was -- let's assume that one of your

1 California lawyers came to our jurisdiction, committed an
2 offense which was clearly disbarable under the California
3 Code of Professional Responsibility, clearly disbarable
4 under our Code of Professional Responsibility, there were
5 hearings held, appeals held, there was an adjudication by
6 our Court that this lawyer should be disbarred, and we sent
7 that order to California.
8 Would you, California, give that full faith
9 and credit? The delegate said, "Absolutely not." At which
10 point there was a groan in the room.
11 And that's the problem. That's part of the
12 problem we have got to take a look at in terms of
13 accountability.
14 I was just going to say, I have been looking
15 at these issues, trying to come up with categories. I
16 think if we look at -- the main thing ought to be the
17 protection of the public, making sure there is some
18 mechanism in place to respond if there is a grievance filed
19 against a Nevada lawyer, a California lawyer, a Colorado
20 lawyer, regardless of their specialty.
21 And we also need to look at in the field of a
22 litigation sense and, on the other hand, in a transactional
23 sense, outside the court. The litigation forum is pretty
24 well regulated by Supreme Court Rule 42.
25 And I think if we approach the problem, look

1 at if the lawyer is coming to Nevada to represent Nevada
2 citizens on a continuous systematic basis, that is one
3 thing; as opposed to isolated, you know, once every five
4 years or related to some particular specialty. That is one
5 area.
6 In terms of a mechanism to keep account of
7 that, you know, there are mechanisms other than SCR 42
8 where you go through the motion practice, file the
9 statement with the State Bar, do that.
10 Other states have been looking at different
11 models, some form of registration system. So I think, we
12 don't need to -- this is not black and white. There is a
13 lot of gray areas.
14 CHAIRMAN WILSON: Before we get caught up in
15 discussion among ourselves, we have another speaker.
16 Welcome. Why don't you sit at the microphone.
17 MS. WIN SMITH: My name is Win Smith. I am from
18 the Elko County Clerk's office. Mr. Mowbray called
19 yesterday and asked me if I would just speak briefly on
20 what our local practice is with getting out-of-state
21 attorneys.
22 More often than not, we will have one of the
23 local attorneys call and say, Do you have some form? Which
24 we do have, we have a form we present to them. It is Rule
25 42. We give that out to them, then we file it within that

1 case, that file.

2 Occasionally, we get an out-of-state attorney

3 calling about a foreign judgment. We will tell them

4 at that time, Don't put your name on any of the filings,

5 because -- unless you are admitted to the Nevada bar.

6 So what they will do is they will just present

7 us with an out-of-state foreign judgment and it will be

8 prepared on legal paper without their letterhead. So

9 that's really easy in our office.

10 CHAIRMAN WILSON: So they just mail it to you and

11 you prepare -- take a -- create a Nevada judgment, have it

12 entered by the Court?

13 MS. SMITH: No, it's a foreign judgment. It can

14 be from -- we get quite a few of them from Utah. For

15 instance, somebody goes over to the University of Utah

16 Medical Center, doesn't pay their bill, they will get a

17 foreign judgment, then they do executions on it.

18 It just doesn't have a -- it has no local

19 attorney, nor does it have a Utah attorney.

20 JUDGE HARDESTY: But the effect -- to effect an

21 execution, a law firm must be doing that through and writs

22 and the like?

23 MS. SMITH: They just send them, then we issue

24 them. It doesn't have any letterhead on them, so --

25 CHAIRMAN WILSON: What happens after that you

1 don't hear?

2 MS. SMITH: No.

3 MR. ADDISON: Isn't the procedure you do a notice

4 of filing of foreign judgment, you attach an exemplified

5 copy, then they wait the 30 days, go to the sheriff's

6 office after they have the execution issued by your office,

7 and if there is a bank account, it's done without a lawyer,

8 Nevada lawyer being involved, correct?

9 MS. SMITH: If a Nevada lawyer -- there is one

10 attorney in Reno that does a lot of foreign judgments. He

11 attaches a notice of foreign judgment. He does put his

12 letterhead on it. Otherwise, they will just come in

13 without that.

14 MR. ADDISON: But the law is, as I understand it,

15 is that a foreign judgment doesn't become an enforceable

16 Nevada judgment until 30 days passes following its filing

17 and service upon the judgment debtor.

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

19 MR. ADDISON: Right. In fact, it can be

20 challenged in that period.

21 MS. SMITH: That's true. And we just -- we file

22 them, and then within a month, or after a month, they do

23 the execution. They don't do that immediately.

24 MR. ADDISON: Right. The execution is just on a

25 form you have that need not be accompanied by anything from

1 a lawyer?

2 MS. SMITH: Exactly.

3 MS. STURMAN: I wanted to ask you a question.

4 Absolutely different topic. But just if you are familiar

5 through filings in your local courts, do you have a lot of

6 attorneys coming from out of state, particularly, I guess,

7 neighboring states like Utah, on a regular basis, having

8 the rule -- a little provision, that, you know, the Judge

9 has discretion if it seems to be excessive? Do you have a

10 problem with people who --

11 MS. SMITH: No. They have to be admitted to the

12 Nevada bar. No. We get -- they are temporary. We pass out

13 this. Normally, what we find is in the past there have not

14 been too many. But as mining came in, we found a lot more

15 of them coming in then.

16 MS. STURMAN: Because I think our rule is five

17 cases in three years or three cases in five years.

18 MR. MOWBRAY: It is presumed to be excessive at

19 five cases in three years.

20 MS. STURMAN: I was wondering if you have a

21 problem with a lot of people who are clearly practicing

22 primarily here, do seven, eight, nine cases in a year.

23 MS. SMITH: I don't think so. I don't think we

24 have ever picked it up, anyway.

25 JUSTICE BECKER: But you wouldn't know if they

1 don't put -- if all they put is pro per, you would just
2 file it, and you would assume that someone else would raise
3 it before the Judge.
4 MS. SMITH: If we see a lot of cases coming in --
5 I'm sure that this would happen. If we saw cases coming in
6 with letterhead we didn't know, Elko is small enough that
7 we would question it.
8 JUSTICE BECKER: But the mines frequently use
9 out-of-state counsel.
10 MS. SMITH: Yes, they do.
11 JUSTICE BECKER: You also see things like the
12 national credit card companies doing things, or are those
13 local attorneys?
14 MS. SMITH: They go normally through -- there is
15 several people in Reno who do a lot of that.
16 MR. MOWBRAY: Thank you very much. Before you
17 leave, I would like to thank you for coming today, taking
18 time out of your busy day to do this.
19 Also leave with you the observation that you
20 are, in many senses, the gatekeeper for the legal
21 profession in the state of Nevada, the entry point for a
22 lot of the citizens. And you provide a very important
23 function in that capacity.
24 MS. STURMAN: And, John, is there something --
25 maybe we should ask, is there more we could do at the State

1 Bar level to help the clerks in the spread out
2 jurisdictions track these things?
3 I mean, maybe there is something logistical,
4 more information we could give to them that might help you.
5 You use our form. Is there any more that we could do that
6 makes that process any easier?
7 MS. SMITH: Perhaps let us know who has been
8 admitted from out of state.
9 MS. STURMAN: On a more regular basis. Maybe
10 they don't know. They may be doing all the cases in Reno,
11 not necessarily in this county. Maybe the State Bar should
12 give more information to our clerks.
13 JUSTICE BECKER: I don't think -- you need to
14 understand the clerks don't have the authority to refuse to
15 file.
16 What they will do, because Elko is small
17 enough, is they would talk to the chief judge, one of the
18 two judges, say, gee, I don't know what to do about this.
19 I guarantee you that is not going to occur in Clark County
20 with the volume.
21 That is not the statutory duty of the Clerk,
22 and the Supreme Court has, in fact, told them they cannot
23 simply say, You can't file a document.
24 CHAIRMAN WILSON: There has been some reference
25 to the mining companies. What has been their practice?

1 MS. SMITH: Well, the only time that we would see
2 a mining company is if there is a big mining civil suit,
3 and then their attorneys come in, and we will end up filing
4 one of these forms.
5 I am trying to think of some of the --
6 Barrick, we have Barrick and Newmont who are two of the big
7 ones. Anglo Gold is another big one. They occasionally get
8 going with cases and they are voluminous, they file these.
9 They are very compliant with everything.
10 MR. KIMBROUGH: The State Bar staff is currently
11 in the process, with regular assistance from Rob, in
12 revamping all of our forms and procedures for SCR 42, and I
13 have just made a note to make sure once those new forms are
14 done that we will get that information out to all the
15 district clerks.
16 I really don't think I have ever focused on
17 the fact that you had the forms you passed out. So that is
18 helpful information.
19 MS. SMITH: If you would like to keep this and
20 you can look at our form, the form we have been using. It
21 may not even -- it might be old. I don't know. Once we
22 get one, we keep them.
23 MR. KIMBROUGH: I will defer to Rob, let Rob take
24 a look at it. Thank you. We appreciate it.
25 MS. SMITH: Thank you inviting me.

1 CHAIRMAN WILSON: We appreciate you coming today.
2 This is kind of an unruly bunch.
3 Let's adjourn the public hearing and we'll simply
4 convene with the committee meeting right now.
5 (WHEREUPON, the public comment portion of the meeting
6 was concluded)

ATTACHMENT C

TRANSCRIPT OF PUBLIC HEARING
SEPTEMBER 28, 2001
LAS VEGAS

COMMISSION ON MULTIJURISDICTIONAL PRACTICE PUBLIC HEARING

FRIDAY, SEPTEMBER 28, 2001

Page 1 to Page 143

CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:

LAURIE WEBB & ASSOCIATES
LITIGATION SUPPORT SERVICES
517 South Ninth Street
Las Vegas, NV 89101
Phone: (702) 386-9322
FAX: (702) 386-9825

Page 1

SUPREME COURT OF NEVADA
COMMISSION ON MULTIJURISDICTIONAL PRACTICE
PUBLIC HEARING

Grant Sawyer Building
555 East Washington Boulevard
Las Vegas, Nevada 89101

Friday, September 28, 2001
9:00 a.m.

Reported by: Wanda L. Barnes
CCR 676, RPR

Page 2

APPEARANCES:

THOMAS R. C. WILSON, Chairman
HON. JAMES B. AMES
BRIDGET ROBB PECK
MARGO PISCEVICH
HON. JAMES W. HARDESTY
JUSTICE NANCY A. BECKER
HON. RONALD D. PARRAGUIRRE
JOHN H. MOWBRAY
GLORIA J. STURMAN
NANCY ALLF
ALLEN W. KIMBROUGH
WILLIAM A. TURNER
RICHARD MORGAN
NEIL G. GALATZ

Page 3

PUBLIC SPEAKERS

	PAGES
DENNIS L. KENNEDY	5 - 16
DANIEL J. MC AULIFFE	16 - 37
DREW CASS	37 - 48
JOHN REDLEIN	48 - 54
TROY WALLIN	54 - 63
EVA G. CISNEROS	63 - 66
TOM BIGGAR	66 - 78
SHIRLEY PARRAGUIRRE	78 - 83
DEBBIE AMIGONE	83 - 84
LEON MEAD II	84 - 98
ANTHONY DE MINT	98 - 103
JARED SHAFER	103 - 109
BERNA L. RHODES-FORD	110
KYM CUSHING	111 - 119
CHARLES W. SIMMONS	119 - 126
CAM FERENBACH	127 - 132
ROB BARE and NORMAN KIRSHMAN	132 - 142

Page 4

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'll 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.

Page 5

(1) **JUSTICE BECKER:** State Justice Nancy Becker.
(2) **HON. PARRAGUIRRE:** Ron Parraguirre, Las
(3) Vegas.
(4) **MR. MOWBRAY:** John Mowbray, from Henderson,
(5) Las Vegas, Carson City and a little bit of Reno.
(6) **MS. STURMAN:** Gloria Sturman, Las Vegas.
(7) **MS. ALLF:** Nancy Allf, Las Vegas.
(8) **MR. KIMBROUGH:** Allen Kimbrough.
(9) **MR. TURNER:** Bill Turner, Las Vegas.
(10) **MR. MORGAN:** Richard Morgan, dean of the Boyd
(11) Law School, Las Vegas.
(12) **MR. GALATZ:** Neil Galatz, Las Vegas.
(13) **CHAIRMAN WILSON:** All right. Welcome
(14) everybody.
(15) Let's get started. Dennis Kennedy.
(16) Welcome, Dennis.
(17) **MR. KENNEDY:** Thank you, Mr. Chairman,
(18) members of the committee. I'm Dennis Kennedy. I am a
(19) member of the firm Lionel Sawyer & Collins.
(20) In the written materials that I submitted I
(21) set out briefly my background and experience in this
(22) area and the ideas and suggestions that I have for the
(23) committee are due in some degree to my experience on the
(24) disciplinary committee in southern Nevada, which I
(25) chaired for three years, and on matters in this area

Page 6

(1) that came before the disciplinary committee.
(2) I have also since leaving the disciplinary
(3) committee represented clients in two unauthorized
(4) practice matters that came before the state bar where I
(5) think all of the issues and concerns that I raise in the
(6) written materials arose, and I -- the point of my
(7) appearance and my written submission is this.
(8) There are some areas of great importance that
(9) the committee should consider in whatever
(10) recommendations it makes to the Supreme Court, and I've
(11) set those out individually in the written materials.
(12) Briefly, they are that any regulation of the
(13) multijurisdictional practice of law has to address these
(14) issues.
(15) The first is competence.
(16) As the committee knows, Nevada requires
(17) graduation from an ABA accredited law school, and in any
(18) regulatory scheme for the multijurisdictional practice
(19) of law that matter has to be addressed.
(20) As the committee knows, in California lawyers
(21) are allowed to practice without an ABA accredited law
(22) school. Nevada sets its level somewhat higher than
(23) that.
(24) That's something that any regulatory scheme
(25) for a multijurisdictional scheme in Nevada has to

Page 7

(1) address, the issue being are we going to permit
(2) graduates of non-ABA accredited graduates to come here
(3) to practice under such a scheme.
(4) Nevada has a CLE requirement including both
(5) substantive law and ethics. Not all other states has
(6) those schemes. Nevada deems it important enough to make
(7) continued bar membership dependent upon completion of
(8) CLE, and that's something that the committee has to
(9) consider, and that is are you going to place those same
(10) requirements on foreign lawyers who come to Nevada, and
(11) if you are, how are you going to enforce that, how are
(12) you going to make sure that those lawyers have completed
(13) those requirements.
(14) The second item is discipline. That's a
(15) significant item. As the committee knows, any foreign
(16) lawyer who applies to take the bar in Nevada undergoes a
(17) thorough investigation of history and background, and
(18) one of the focuses of that information is the history of
(19) discipline in other jurisdictions.
(20) If you're going to adopt a scheme that allows
(21) lawyers to come to Nevada and practice, that scheme
(22) would have to provide for some investigation of a
(23) lawyer's prior disciplinary history because it's fair to
(24) say that a lawyer with a significant disciplinary
(25) history who will apply to take the bar in Nevada in all

Page 8

(1) likelihood might not be allowed to take the bar at all.
(2) That same standard it seems to me would have
(3) to be applied to foreign lawyers who want to come here
(4) and practice under some multijurisdictional scheme, and
(5) yet how that scheme would implement that requirement and
(6) ensure that scrutiny is something I just don't have an
(7) answer for; but it's something if the committee is
(8) willing to adopt that sort of scheme, the committee
(9) would have to consider and would have to answer that
(10) question.
(11) Much the same is true about character and
(12) fitness. In applying to take the bar, lawyers, foreign
(13) lawyers, undergo a rather rigorous character and fitness
(14) in Nevada, yet in a multijurisdictional setting a lawyer
(15) would not have to undergo that character and fitness at
(16) all.
(17) Again, if there's going to be a scheme to
(18) allow multijurisdictional practice, some sort of
(19) character and fitness requirement has to be put into
(20) place, and I would suggest to you from my own experience
(21) that simply saying, well, if the lawyer has passed the
(22) character and fitness requirements of another state,
(23) then he ought to presumptively come into Nevada.
(24) That won't work.
(25) In the days that I was the chairman of the

Page 9

(1) Southern Disciplinary Committee before the formal
(2) establishment of the character and fitness committee,
(3) which we now have the chairman, was the character and
(4) fitness committee, and if someone's application fell
(5) out, then it was the chairman's responsibility to
(6) conduct an investigation and do an interview and do a
(7) hearing, et cetera, et cetera, and in one instance a
(8) lawyer who had been licensed in California for some time
(9) had his bar application fall out and it was referred to
(10) me for a character and fitness evaluation.
(11) This lawyer had a history in California of
(12) tax liens, and his history of tax liens was a few days
(13) or a few weeks before the sale he would pay off the lien
(14) with interest and go on about his business; but for
(15) years he had tax liens all which had incurred right
(16) before the sale.
(17) I told him I'm very concerned about this,
(18) because if you practice in Nevada, you'll have a trust
(19) account, you'll have client's monies, your history of
(20) tax liens and paying them off right before the sale is
(21) some great of concern to us.
(22) And his response was: California was never
(23) concerned about it. That was his explanation.
(24) He did not take the bar because I was not
(25) satisfied with that explanation, and I thought based on

Page 10

(1) that history and no good explanation that he would be a
(2) threat to his clients in Nevada.
(3) The fourth concern that the committee would
(4) have to address is that of professionalism, and, simply
(5) stated, lawyers that practice in Nevada are members of a
(6) relatively small legal community and we practice with a
(7) high degree of professionalism; and one of the things
(8) the committee has to be concerned with is foreign
(9) lawyers may not share the concerns for professionalism
(10) that Nevada lawyers have, and there isn't any way to
(11) require that lawyers behave professionally, but the
(12) norms of the legal community have their own force on
(13) that, and the lawyers who practice in a small community
(14) tend to realize that being a professional and being
(15) honorable is one of the keys of success in practicing
(16) law.
(17) I don't know how the committee would ensure
(18) that foreign lawyers would operate within those same
(19) norms that all of us as Nevada lawyers operate within.
(20) It's not an answer, I don't think, to say, well, if the
(21) lawyer does not operate professionally or in the
(22) community's norms, he won't be successful and will have
(23) a difficult time and he might get sanctioned by courts,
(24) et cetera et cetera, that's all fine.
(25) But those are all post hac things, and the

Page 11

(1) interest of Nevada in regulating lawyers is not served
(2) by waiting until there are problems and then dealing
(3) with them, especially in the situation like this where
(4) you're adopting a regulatory scheme.
(5) You've got to adapt a scheme, I think, that
(6) ensures that these standards and norms are going to be
(7) met by anyone who comes here, not simply to ensure that
(8) someone who doesn't fly with them might be served after
(9) the fact. That doesn't serve the interest of clients,
(10) nor does it serve the interest of the legal community,
(11) as I said, in this state which depends on the
(12) professionalism and the professional behavior of its
(13) members.
(14) The other item, advertising, I think I
(15) covered in the written materials. Simply, if you're a
(16) Nevada lawyer, you're subject to certain rather strict
(17) and comprehensive requirements regarding advertising.
(18) However, if you are a foreign lawyer, the foreign lawyer
(19) in the state of licensure is not going to be covered by
(20) those requirements.
(21) That foreign lawyer, especially if he or she
(22) is in a city near the border, can -- in another state
(23) can essentially do whatever he or she please with
(24) respect to Nevada and not be subject to those
(25) advertising restrictions.

Page 12

(1) Question?
(2) **MS. STURMAN:** Mr. Kennedy, a point of
(3) clarification, do you feel that the concern about
(4) multijurisdictional practice should apply both to those
(5) who are here to do litigation and work directly in our
(6) court system only or should the consideration also be
(7) those who come here to do transactional work, corporate
(8) work, perhaps in-house counsel?
(9) I wasn't clear if you were just addressing
(10) the litigation field or --
(11) **MR. KENNEDY:** Real good question.
(12) With respect to out-of-state lawyers who come
(13) to do litigation and who come to -- a lawyer with an
(14) office out of state who do transactional work, there
(15) have to be restrictions who apply to both of them.
(16) The current restrictions or regulations which
(17) we have with respect to litigation are pretty good
(18) because you have rule 42 which requires an application,
(19) a notice to the state bar. The state bar does an
(20) investigation into the lawyer's history. That is all
(21) presented to the court, and then there is -- I don't
(22) want to call it an adversarial hearing, but there is an
(23) opportunity for the state bar to present its findings to
(24) the district court and for the other side to raise any
(25) issues that have come up, and I think in the litigation

Page 13

(1) context the practice of out-of-state lawyers is pretty
(2) well regulated.
(3) In the commercial context it, unfortunately,
(4) is not, but that's an extremely difficult area and I
(5) know that's an area that bar counsel has struggled with
(6) over the years.
(7) It is very, very difficult when lawyers are
(8) crossing state lines to do commercial transactions.
(9) Technically when they come to Nevada and engage in the
(10) practice of law in a commercial transaction, they're
(11) engaging in the illegal practice of law. I know the
(12) restatement takes a position on it and the ABA takes a
(13) position on, it. But that doesn't have an easy answer
(14) at all.
(15) But it is an area where the same concerns are
(16) present. I mean you can have -- you call them, you
(17) know, the foreign state's worst lawyer, if he comes here
(18) to do litigation, he's not going to get his rule 42
(19) application.
(20) **CHAIRMAN WILSON:** I guess the doubles is in
(21) the details, how do you administer the standard of
(22) practice on the part of the transactional field when
(23) you're not under the jurisdiction of a trial court who
(24) admits you under pro hac vice under certain conditions.
(25) **MR. KENNEDY:** That's correct.

Page 14

(1) Mr. Chairman, I know based on my experience
(2) the bar counsel who I have a lot of respect and
(3) admiration for in the work that he does, his efforts
(4) have been or his philosophy has been, look, there's no
(5) way I can regulate this because I don't know who is
(6) coming in and who's not, but the state's bar position,
(7) as I understand it, has been if there is a complaint, I
(8) will then act on the complaint.
(9) **CHAIRMAN WILSON:** Do you think that's
(10) adequate?
(11) **MR. KENNEDY:** Uhm, no, I don't think it is.
(12) **CHAIRMAN WILSON:** The more difficult question
(13) is what should we recommend in lieu of the status quo?
(14) **MR. KENNEDY:** That's right. As I said, you
(15) know, I don't have an answer to that.
(16) **CHAIRMAN WILSON:** Okay.
(17) **MR. KENNEDY:** It's easy to say --
(18) **CHAIRMAN WILSON:** I know where you're going.
(19) **MR. KENNEDY:** I faced it from both sides
(20) while being on the disciplinary committee and while
(21) representing clients in front of disciplinary committee.
(22) **CHAIRMAN WILSON:** I don't want to cut you
(23) off. I have one further question, whether you have a
(24) view with respect to the practice by in-house counsel
(25) who represent in effect a single employer client.

Page 15

(1) **MR. KENNEDY:** Yes, I do. That's a good place
(2) for me to conclude my remarks.
(3) I don't think that in-house counsel present
(4) the same sort of problem that we're talking about. The
(5) ABA in the ABA annotated rules of professional conduct
(6) has a section on this, and I agree with it. The ABA
(7) says it doesn't present the usual problems because this
(8) is an individual who is licensed to practice law
(9) somewhere else who is an employee of an entity in the
(10) state, and the dangers of that individual putting, say,
(11) unsophisticated clients in jeopardy is almost
(12) nonexistent because that individual is an employee of an
(13) entity. That entity has control over him.
(14) If the entity is unhappy with the work that
(15) he's doing or she is doing --
(16) **CHAIRMAN WILSON:** You would recommend that
(17) person not be required to take the bar exam?
(18) **MR. KENNEDY:** That's my feeling.
(19) **CHAIRMAN WILSON:** Do you recommend that
(20) person nonetheless should be required to register for
(21) the bar as an in-house counsel subject to the same
(22) ethical rules and principles as those in private
(23) practice?
(24) **MR. KENNEDY:** Yes, I do.
(25) Supreme Court rule 99 as interpreted by the

Page 16

(1) Nevada Supreme Court in Waters versus Barr says if you
(2) are practicing in Nevada, you are under the bar's
(3) jurisdiction because in that case the individuals were
(4) United States attorneys who were not admitted. They
(5) said we're practicing in federal court, and the bar of
(6) the Supreme Court said: Doesn't matter to us. You're
(7) practicing law in Nevada. We have jurisdiction over
(8) you. The state rule under rule 99 does have
(9) jurisdiction over federal counsel.
(10) **CHAIRMAN WILSON:** Mr. Kennedy, thank you very
(11) much.
(12) Kurt Faux.
(13) Kurt Faux.
(14) All right. We'll pass. If he
(15) Patricia Curtis, please.
(16) Is Patricia Curtis here?
(17) Well, we're back on schedule.
(18) Daniel McAuliffe, Snell & Wilmer.
(19) **MR. MC AULIFFE:** Patricia is my partner.
(20) Maybe she thought I was going to fill in for her.
(21) **CHAIRMAN WILSON:** You've just been nominated
(22) solo, alone and all by yourself.
(23) **MR. MC AULIFFE:** That's happened before.
(24) I thank you commissioners for giving me the
(25) opportunity to talk to you this morning. My name is Dan

Page 17

(1) McAuliffe. I am a partner in a Phoenix based firm,
(2) Snell & Wilmer, LLP, but we also have offices in Tucson,
(3) Orange County, Salt Lake City and Denver and now sort of
(4) in Las Vegas.
(5) What I want to talk to the commission about
(6) briefly is how you address the issue of the
(7) multijurisdictional law firm which I think is part and
(8) parcel of the multijurisdictional practice issue as a
(9) whole.
(10) My remarks are necessarily going to address
(11) the provisions of Supreme Court rule 199 because it does
(12) impact the entry into Nevada of multijurisdictional
(13) practices.
(14) So in the interest of full disclosure, I will
(15) advise the commission I'm also lead counsel in the
(16) litigation that our firm has instituted to have Supreme
(17) Court rule 199 definitively declared unconstitutional
(18) both because I think it's beside the point and also
(19) outside the fairness.
(20) I'm not here to talk about rule 199's
(21) constitutionality. What I would like to discuss is its
(22) wisdom and its effectiveness in serving the interest of
(23) the citizens of Nevada who are in need of legal
(24) services.
(25) If I can digress for a moment, let me share

Page 18

(1) with you very briefly the experiences that I have had as
(2) a lawyer practicing in Arizona since -- no one is going
(3) to believe this, but since 1973. I look a lot younger
(4) than that.
(5) In Arizona in 1973 forward we experienced a
(6) period of phenomenal population and economic growth, not
(7) dissimilar to what has started here in Nevada and will
(8) probably continue.
(9) So there are lessons to be learned, I think,
(10) from what's happened in Arizona here for the people of
(11) Nevada.
(12) When you look at the papers, when they report
(13) what are the fastest growing areas in the country, it's
(14) always a race between what's first, Phoenix or Las
(15) Vegas. That rapid growth in the '70s and the '80s
(16) produced at least in Phoenix a number of things that
(17) affected the legal community. One was a sharply
(18) increased demand for legal services which outstripped
(19) the resources of the existing legal community.
(20) When I started at Snell & Wilmer in 1973 I
(21) was lawyer 35. We now have 350.
(22) Far more importantly, clients from other
(23) sections of the country started doing business in
(24) Arizona as they are now starting to do business in
(25) Nevada, and they wanted to, I think naturally, continue

Page 19

(1) the relationships which they had established in their
(2) home base of operations with the law firms they were
(3) familiar with. They knew these people. They trusted
(4) them. They wanted them to do their legal work.
(5) As a consequence we saw the opening in
(6) Phoenix of local offices for a lot of multistate firms.
(7) Some of them exist there today; some of them didn't
(8) survive.
(9) One thing we didn't see was economic hardship
(10) visited upon the existing Phoenix firms, nor did we see
(11) -- and I know where I speak, I was -- had an experience
(12) similar to Mr. Kennedy's. I'm the chair -- I was the
(13) chair of the disciplinary commission down in Arizona for
(14) a period of time.
(15) I was also the chair of the judicial
(16) disciplinary commission for a while which gave me some
(17) degree of pleasure; I am an author of treatises on
(18) Arizona legal ethics; and much more I'm the chair of
(19) Arizona professional committee which is in charge of
(20) making sure that lawyers behave like adults, which they
(21) don't often do.
(22) One recommendation I have, you got to teach
(23) them what the standard of practice is and how you behave
(24) on things that are outside the rules. We didn't see a
(25) rampant disregard of our ethics rules or harm visited

Page 20

(1) upon clients served by these new law firms.
(2) Phoenix firms reacted competitively and grew
(3) to match. In fact, the two largest firms in Phoenix
(4) today were the two largest firms that were in Phoenix in
(5) 1973, Snell & Wilmer and Lewis & Rocker.
(6) Far more importantly, both our bar and
(7) community were significantly enriched in the long run by
(8) the presence of these firms in other states.
(9) What I have observed about the behavior of
(10) multijurisdictional law practices -- and I deal with
(11) them a lot -- is they have a sincere desire to be good
(12) citizens, to make positive contributions to communities,
(13) and Arizona clients benefit from their arrival.
(14) The fact of the matter is large
(15) multijurisdictional practices in many instances have
(16) resources that are necessary to handle certain types of
(17) legal engagements competently. That's just a fact.
(18) Let me give you an example. When I leave
(19) here today -- I should point out also I am a member of
(20) the state bar of Nevada and have been since 1993.
(21) **MS. STURMAN:** Then of course, Mr. McAuliffe,
(22) you know it's pronounced Nevada.
(23) **MR. MC AULIFFE:** When I leave here today I am
(24) going to meet with an individual who contacted me
(25) earlier in the week which has massive litigation pending

Page 21

(1) in the Nevada courts and wants to engage our firm to
(2) handle it, and they want us to handle it for this
(3) reason. They have been in touch with five Nevada firms.
(4) One has a conflict of interest. The other four have
(5) told this person we simply can't handle it, we don't
(6) have the horses to do that.
(7) **CHAIRMAN WILSON:** I am not interrupting, but
(8) as I said before the devil is in the details.
(9) Recognizing the advantages of a client in
(10) Nevada of retaining a multistate law firm with the
(11) professional resources and standards you described, I
(12) guess the question comes down to the more difficult one,
(13) which is not appreciating what your firm brings to the
(14) table, it is how do we distinguish between the firm of
(15) your ethical standards and professional abilities on the
(16) one end and the storefront on the other who has a matter
(17) or two, which markets legal services and then sports
(18) them to another state to actually do the work? You know
(19) what I'm comparing.
(20) And my question is --
(21) **MR. MC AULIFFE:** I don't think you do
(22) distinguish between the two. I think they ought to be
(23) subjected to the same rules.
(24) **CHAIRMAN WILSON:** I guess my question is what
(25) should the rules be which would govern your practice and

Page 22

(1) govern that practice so to avoid the problems of that
(2) example.
(3) **MR. MC AULIFFE:** That is a difficult
(4) question.
(5) **CHAIRMAN WILSON:** And, unfortunately, it's
(6) the question that we have to deal with and it's --
(7) **MR. MC AULIFFE:** My point really was going to
(8) be telling us we can't use our name is not the answer.
(9) That doesn't address the problem one way or another.
(10) **JUSTICE BECKER:** Just to clarify, too, what
(11) we're talking about, our concern is with a law firm from
(12) out of state that hires someone who has just passed the
(13) bar, doesn't have a lot of practice experience, just to
(14) have a Nevada lawyer be a front person for the firm, and
(15) that under those circumstances the firm isn't really
(16) operating to open a branch office or expand its business
(17) but is just hiring a name, if you will, and a Nevada
(18) license. And that's our concern.
(19) **CHAIRMAN WILSON:** That's what I meant by
(20) storefront.
(21) **MR. MC AULIFFE:** With respect to the larger
(22) firms, the notion that we would use a non-Nevada lawyer
(23) to have the final say on handling an issue for Nevada
(24) clients would be both on our part stupid and dangerous.
(25) We don't do things that are stupid and dangerous, but

Page 23

(1) some lawyers do.
(2) There are in the code -- in the code there
(3) are restrictions that do apply to law firms. Law firms
(4) have a responsibility under 5.1 of the model code -- I
(5) believe Nevada has adopted that -- to make sure that
(6) there are policies and procedures in place to ensure
(7) that the lawyers in the firm comply with the rules of
(8) professional conduct, one of which is competence.
(9) I would have no problem whatsoever with a
(10) requirement that law firms opening offices in the state
(11) of Nevada be required to register with the state bar of
(12) Arizona -- state bar of Nevada, I'm sorry, and to advise
(13) the state bar of Nevada as to policies and subject
(14) themselves to the jurisdiction of the state bar of
(15) Nevada and advise the state bar of Nevada of what
(16) policies and procedures they have in place to ensure
(17) that there will not be the unauthorized practice of law
(18) and that people who are practicing law from that firm in
(19) the state of Nevada comply.
(20) **CHAIRMAN WILSON:** What policies and
(21) procedures would you recommend that ought to be required
(22) by rule to guarantee what you're suggesting we ought to
(23) guarantee?
(24) **MR. MC AULIFFE:** That very much varies
(25) according to the size of the firm and I think that's

Page 24

(1) something I would leave to the discretion of the state
(2) bar of Nevada.
(3) **CHAIRMAN WILSON:** Please understand -- and
(4) you're leaving it to our discretion to recommend it to
(5) the Supreme Court and the purpose of this hearing is to
(6) ask you specifically what you might recommend would be a
(7) suitable rule that, one, would not be oppressive, two,
(8) would be wise, and, three, effective.
(9) **MR. MC AULIFFE:** Require them to register
(10) with the state bar of Nevada.
(11) **CHAIRMAN WILSON:** You're not talking about
(12) the Nevada admitted lawyers; you're talking about your
(13) lawyers in Phoenix?
(14) **MR. MC AULIFFE:** No, require the firm, the
(15) firm as the entity, require the firm to advise the state
(16) bar of Nevada what policies and procedures they have in
(17) place.
(18) **CHAIRMAN WILSON:** What would you recommend
(19) those to be?
(20) **MR. MC AULIFFE:** Well, I can tell you what we
(21) do.
(22) **CHAIRMAN WILSON:** That would be helpful.
(23) **MR. MC AULIFFE:** Okay. We have a managing
(24) partner in each office who must be admitted in the
(25) jurisdiction. We have a client review committee which

Page 25

(1) screens everything for conflicts of interest. We have a
(2) ethics committee which lawyers are obligated to consult
(3) with when an ethical issue arises. We have a lawyer
(4) quality committee which has the responsibility for doing
(5) quality control.
(6) **CHAIRMAN WILSON:** Okay. I understand those.
(7) Those are fairly generic and appropriate.
(8) What is your policy with respect to lawyers
(9) resident in Phoenix of your office performing legal work
(10) for clients who are here in Nevada?
(11) **MR. MC AULIFFE:** They may not do it without
(12) the supervision of a Nevada lawyer.
(13) **CHAIRMAN WILSON:** What are the requirements
(14) and criteria for that supervision?
(15) I'm not challenging what you say. What I'm
(16) trying to do is flesh out the issues of this discussion,
(17) to find out what may be workable, whether the idea has
(18) no effect or value or whether it's something we ought to
(19) talk about.
(20) **MR. MC AULIFFE:** The Nevada lawyer must be
(21) responsible to the advice to the client or the final
(22) filings in the filing before the court.
(23) I'm a litigator, but, for example, if I have
(24) a lawsuit up here -- and I've had a number of lawsuits
(25) up here -- I use a non-Nevada lawyer to draft a set of

Page 26

(1) interrogatories or request for production of documents?
(2) For sure I will. For sure I will.
(3) Will I file that? Will I allow that lawyer
(4) to put it in front of me and have me sign it and file
(5) it? Absolutely not? Because Judge Parraguirre is going
(6) to haul me up there and say: What do you think you were
(7) doing?
(8) I will look it over, and that's one of our
(9) requirements. Whatever jurisdiction we operate in, a
(10) lawyer admitted in that jurisdiction must approve any
(11) work product, any advice to a client before it goes out
(12) the door.
(13) **MS. PECK:** Does that include transactional?
(14) **MR. MC AULIFFE:** Yes. And we track that by
(15) knowing -- we track that by -- the managing partner
(16) tracks -- I don't know if you need to get into this
(17) level of detail, but the managing lawyer tracks that,
(18) and who has the last time recorded, you can tell whether
(19) that rule has been complied with.
(20) **MR. MOWBRAY:** Your firm has presence in many
(21) jurisdictions. Do any of the bars in those
(22) jurisdictions have mechanism of the type Commissioner
(23) Wilson was addressing?
(24) **MR. MC AULIFFE:** No, not that I'm aware of,
(25) but we wouldn't have a problem with it. We have Utah,

Page 27

(1) Colorado, California, and they do not have any such
(2) restriction.
(3) **CHAIRMAN WILSON:** Indulge me a minute. If we
(4) were to recommend ultimately this is good public policy
(5) in terms of the profession's activity in this thing,
(6) what would be the essential requirements of a rule which
(7) would define your firm's responsibility, the Nevada
(8) lawyer's responsibility and the lawyer's in your Phoenix
(9) office responsibility with respect to representation of
(10) a Nevada client?
(11) **MR. MC AULIFFE:** I think the --
(12) **CHAIRMAN WILSON:** The threshold issue here is
(13) assuming the public policy is what you're talking about
(14) is a good idea and the rules should provide for it and
(15) sanction it, how do we distinguish between and how do we
(16) provide an adequate enforcement measure between the
(17) storefront operation, which is not in good faith, which
(18) is a sham, how do we define the obligations so we can --
(19) **MR. MC AULIFFE:** I'm going to take this from
(20) the ethics opinion coming from Arizona, which I'm
(21) familiar with, which is what does or does not constitute
(22) the unauthorized practice of law.
(23) I think the rule 8, taking the assumption
(24) you're going to require the law firm to register, there
(25) could be a requirement and we would have no problem with

Page 28

(1) a requirement that any legal services rendered for a
(2) Nevada client or involving issues of Nevada law be
(3) performed or supervised by a lawyer admitted to the
(4) state bar of Nevada.
(5) That would be the requirement. Determining
(6) whether it was being complied with would have to be the
(7) subject of investigation.
(8) **CHAIRMAN WILSON:** Of course that's an
(9) after-the fact matter which as a practical matter would
(10) only arise in the event there was some kind of
(11) disciplinary complaint which puts the issue on the table
(12) and then you would have an investigation I.
(13) **MR. MC AULIFFE:** Mr. Wilson, naively I --
(14) naively I believe that 98 to 99 percent of the lawyers
(15) in this country take the rules seriously, look at the
(16) rules and comply with them. The problem is the one
(17) percent that gets all the press.
(18) **CHAIRMAN WILSON:** That's true. But I'm
(19) testing the proposition. As I said before, please
(20) indulge me, our job is to test the proposition, and the
(21) test is what -- what in terms of disclosure and
(22) enforcement would you recommend to ensure not just the
(23) bar and the court and the public that you've got
(24) adequate accountability and compliance on the part of
(25) lawyers in Phoenix doing work on a Nevada law through

Page 29

(1) your Nevada office for a Nevada client.
(2) I'm not being adversary.
(3) **MR. MC AULIFFE:** I think the rules I just
(4) suggested to you would be adequate for the circumstances
(5) with respect to trying to have a proper prophylactic
(6) measure in effect that ensures rules are complied with
(7) rather than have a disciplinary measure after the fact.
(8) The only way to do that I think, Mr. Wilson,
(9) is to have someone from the state bar in Nevada sitting
(10) in every law office in the state, and I think that's
(11) unworkable.
(12) **CHAIRMAN WILSON:** I would agree with that.
(13) **MR. MC AULIFFE:** Sometimes some problems can
(14) only be dealt with after the fact. I take comfort in
(15) the fact if people know what the rules are, this is the
(16) rules you have to comply with.
(17) I think if you're going to have a law office
(18) in the state of Nevada, I think 99 percent of the people
(19) are going to follow the rules.
(20) **MR. GALATZ:** I have a particular problem with
(21) attorneys coming out of Phoenix doing personal work
(22) here. We start to set a deposition. We hear the guy in
(23) Phoenix has to set that. Then there is a document
(24) that's due and nobody seems to know where the documents
(25) are, and there is a major problem of communication

Page 30

(1) coordination. The offices they use seem not well run.
(2) That's an internal problem to some degree,
(3) but it's a problem from my point of view because I wind
(4) up, either myself or secretary or both of us, spending
(5) endless time chasing down what would normally be a
(6) rather simple thing.
(7) And, yes, I know I can file my motion in
(8) front of Mr. Biggar and seek sanctions.
(9) I have concerns as a practical matter with
(10) the problems of multiple offices dividing
(11) responsibility, this associate in Phoenix is doing work
(12) on it, this one here is doing some, meaning nobody knows
(13) what's going on.
(14) How do we handle that other than telling me I
(15) can go to Mr. Biggar and get sanctions?
(16) **MR. MC AULIFFE:** That can happen to you
(17) dealing with a person holding a Nevada license.
(18) **MR. GALATZ:** I haven't had that problem
(19) nearly as often as I have with people from Phoenix.
(20) **MR. MC AULIFFE:** What I suggest you do,
(21) because it tends to be fairly unworkable to always go to
(22) the disciplinary process or go to a court, we have
(23) something we call a peer review committee which
(24) functions -- what they do, you call them up, you refer
(25) the matter to them and say, look, it's not unethical,

Page 31

(1) but it's really a pain in the you know where. It's
(2) unfortunate. And they get on the phone with the person
(3) and either call the managing lawyer or the partner in
(4) charge and say get control of this. And it's extremely
(5) effective.
(6) **MR. GALATZ:** We have another committee to
(7) help solve this problem. It's another possible
(8) solution.
(9) **MR. MC AULIFFE:** In Arizona it has been
(10) extremely effective, and there's a very similar
(11) operation which is surprisingly effective to my mind
(12) because it's not a unitary bar in Massachusetts.
(13) **JUSTICE BECKER:** Mr. McAuliffe, does the
(14) state of Arizona have a rule that allows them to
(15) actually sanction or initiate disciplinary proceedings
(16) against a law firm as an entity?
(17) **MR. MC AULIFFE:** Yes. We have adopted a rule
(18) 5.1 of the -- well --
(19) **JUSTICE BECKER:** I don't think 5.1 --
(20) **MR. MC AULIFFE:** The answer to that is no.
(21) What has happened in Arizona is sanctions
(22) being -- rule 5.1 is the rule that I mentioned earlier
(23) that says the law firm has responsibility. It has been
(24) invoked in at least two cases that I'm familiar with as
(25) a basis for imposing sanctions against a managing

Page 32

(1) partner or what they call a supervisory partner.
(2) I read that case very carefully because I'm
(3) the chair of our ethics committee and I think I fall
(4) under the category of people the ax might fall on
(5) against someone in a managerial position for the failure
(6) to have those policies and procedures in place.
(7) But we do not have a rule that permits the
(8) imposition of sanctions against the law firm pro se.
(9) **JUSTICE BECKER:** Do you see a problem with
(10) that rule if we would allow or encourage -- because your
(11) point is in today's world clients in Nevada may want to
(12) seek representation from either a law firm that has a
(13) branch office in Nevada or even a law firm for
(14) transactional business that has a specialty outside of
(15) Nevada that they feel could represent them better than
(16) perhaps a Nevada lawyer.
(17) Now, whether that's true or not, that's their
(18) perception, and what you're saying is the -- that client
(19) ought to have that opportunity. So the issue is if we
(20) present that opportunity by redefining the unauthorized
(21) practice of law, do you have any objection or see any
(22) problem with having those law firms register and then
(23) the law firm is subject to sanction rather than the
(24) individual managing partner or supervising attorney?
(25) **MR. MC AULIFFE:** I will tell you that I

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
(7) authorized the imposition of sanctions against law firms
(8) and there was a huge debate. It never even got to the
(9) House of Delegates.
(10) **CHAIRMAN WILSON:** But do you think it's a
(11) good idea?
(12) **MR. MC AULIFFE:** Depends on how it's enforced
(13) and depends on what defalcations can lead to the firm.
(14) The concern that has been raised to me is the firm
(15) becomes subject to sanctions because someone in some
(16) far-flung office just loses it and gos 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
(4) do with smaller firms, the one- or two- or three-person
(5) law firm who doesn't have a plethora of committees,
(6) ethics committees and the like in place at Snell &
(7) Wilmer.
(8) What's the appropriate approach for that?
(9) Because, frankly, that's perhaps the bigger concern on
(10) the citizens of Nevada about hiring an individual.
(11) We've had some examples provided to us in the Elko
(12) hearings where a smaller firm of one or two people hire
(13) a first year law student to act as their representative
(14) in Nevada and they perform legal services for Nevada
(15) citizens which maybe are significantly substandard and
(16) these firms aren't going to have committees like you
(17) have talked about.
(18) What about that situation?
(19) **MR. MC AULIFFE:** My description of what the
(20) firm has sounds grandiose. What it boils down to is
(21) it's only seven people.
(22) **HON. HARDESTY:** Maybe they should be subject
(23) to sanctions.
(24) **MR. MC AULIFFE:** Well, we are large enough so
(25) that we tend to become bureaucratic, and some degree of

Page 35

(1) bureaucracy is necessary. They've got an analogue to do
(2) it.
(3) It can be the breakfast meeting. I'm
(4) familiar with some small shops in Phoenix. They have
(5) the weekly breakfast meeting where they review every
(6) case in the office and who's doing what. It's not
(7) called an ethics committee. It's not called quality
(8) control committee. Someone is managing that law firm.
(9) And if someone is not managing that law firm, there's
(10) nothing wrong with imposing a requirement that they do
(11) it.
(12) **HON. HARDESTY:** Just one other area.
(13) The litigation side has some supervision in
(14) the courts and the like. The more illusive problem
(15) seems to me to be the transactional problem, and
(16) Mr. Galatz just talked about the litigation problem.
(17) What do you do in a situation where you're
(18) trying to negotiate a large transaction, you're getting
(19) the run-around by foreign counsel in the negotiations?
(20) Running to the state bar is probably going to harm the
(21) negotiations and harm your client's transaction.
(22) What do you do in that situation?
(23) **MR. MC AULIFFE:** I don't know. It's a
(24) terrible, terrible problem. I know it goes on. Perhaps
(25) you call the managing -- I know what happens sometimes

Page 36

(1) down in Phoenix. You just call the managing partner or
(2) the head of the practice group and say: I want to know
(3) what your younger lawyer is doing, what your other
(4) lawyer is doing. Sometimes that's effective. Sometimes
(5) a call to the peer review committee is effective.
(6) **HON. HARDESTY:** Isn't the truth of it, there
(7) isn't much relief?
(8) **MR. MC AULIFFE:** It's a very difficult
(9) problem to keep tabs on because, you know, before I was
(10) admitted up here I did practice law up here for one of
(11) my clients who built the building across the street and
(12) several other casinos across the street -- several other
(13) buildings. That's not a casino across the street.
(14) Before I could walk into a court I had to pay
(15) and give information, and so there was a mechanism for
(16) keeping tabs on me. The fact that I was doing it and
(17) what I was doing and the transactional thing, it takes a
(18) phone call or an e-mail message.
(19) I don't envy you. I would not want to be in
(20) your position to try and come up with a regulatory
(21) solution to that problem. It mystifies me.
(22) **CHAIRMAN WILSON:** I need to move our
(23) calendar. Thank you for coming.
(24) **MR. GALATZ:** I have a question, if I may.
(25) Do you have any thoughts or comments

Page 37

(1) 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

Page 38

(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.

Page 39

(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

Page 40

(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?

Page 41

(1) I am not being adversary. I'm trying to test
(2) this thesis. We're supposed to recommend what ought to
(3) be a rule or not be a rule. The most difficult question
(4) is should that be the policy of law, should we recommend
(5) it.
(6) **MR. CASS:** I'm not sure you should recommend
(7) a black letter rule that the final word on a legal
(8) recommendation has to come from a lawyer who is licensed
(9) in Nevada. I think ultimately the lawyer who takes the
(10) position in court certainly has to be licensed and I
(11) think that a law firm at its peril sets up an operation
(12) where someone not qualified to undertake those legal
(13) services is the one performing those legal services, and
(14) I think if a --
(15) **CHAIRMAN WILSON:** That goes to the numbit of
(16) the problem?
(17) **MR. CASS:** It does. It does. But the
(18) question is how can -- how can the bar control the
(19) activities of people that aren't present or practicing
(20) in the state? They're either practicing here or they're
(21) not, and the question then becomes what is the practice
(22) of law and when does getting input from a distant office
(23) constitute the unauthorized practice of law.
(24) **CHAIRMAN WILSON:** Well, you've stated the
(25) quandary.

Page 42

(1) **MR. CASS:** I have. I wish I had come armed
(2) with specific solutions to add to the play and I
(3) certainly recognize the difficulty of it.
(4) I do know that a rule which says, well,
(5) regardless of these very difficult nuance problems, one
(6) of the solutions we're going to impose is we're just not
(7) going to let you practice under your firm name doesn't
(8) direct you to practice under those firms.
(9) **JUSTICE BECKER:** With regard to the firm name
(10) rule, one of the concerns is that the Nevada resident
(11) understand who they're dealing with, that they not be
(12) mislead into thinking that all of their work is going to
(13) be performed by individuals licensed to practice law in
(14) the state of Nevada.
(15) So if firms are allowed to practice under the
(16) firm name, what would you suggest be added to the rule
(17) in order to make sure that any Nevada resident dealing
(18) with the firm is aware exactly of what they're doing?
(19) Is it a part of the retainer agreement? Should it be
(20) asterisked to the stationery?
(21) **MR. CASS:** I think the committee that was
(22) formed in 1994, one of their recommendations was to
(23) adopt in whole or in part the rule that had been adopted
(24) in New Jersey. I think it can be a combination of
(25) things. I think certainty the letterhead cannot be

Page 43

(1) misleading. And there are certainly rules which could
(2) be put in place so that it is clear that if an
(3) individual lawyer's name is on a letterhead, any
(4) limitations of jurisdictional practice are noted on the
(5) letterhead.
(6) As far as retainer agreements, it would not
(7) be harmful to have a rule that requires jurisdictional
(8) limitations to be set forth in retainer agreements. I'm
(9) not sure that really will solve much of the problem.
(10) For one there is a lot of legal work that can be done
(11) without a written retainer. Some work requires a
(12) written retaining agreement.
(13) I think the narrow thing that will be
(14) addressed is that the public not be mislead that Baker &
(15) McKenzie is not handling their case. I think a very
(16) specific rule about what can or cannot be said on an
(17) individual letterhead can solve that problem.
(18) **MR. GALATZ:** From the way your firm is set
(19) up, do I gather that your policy decision as a firm is
(20) that there is valid reason to have local counsel
(21) handling Nevada matters?
(22) **MR. CASS:** Yes. We handle -- the Nevada
(23) matters are handled solely by Nevada lawyers.
(24) **MR. GALATZ:** Why do you think that's
(25) important to have Nevada lawyers doing Nevada work

Page 44

(1) instead of Arizona lawyers doing Nevada work?
(2) **MR. CASS:** Well, I think that, first of all,
(3) it's unethical to practice law --
(4) **MR. GALATZ:** Right, but --
(5) **MR. CASS:** From a practical standpoint, some
(6) of the problems that you pointed out earlier in terms of
(7) the practicalities of getting the day-to-day business of
(8) law done, certainly when you add a layer of stages to
(9) that it makes logistics more difficult.
(10) **MR. GALATZ:** Communication. Any other
(11) reasons?
(12) **MR. CASS:** Well, I think from a business
(13) standpoint you're not going to be serving the interest
(14) of your clients very well if you are inefficient. And
(15) so to be efficient from a business standpoint, to be
(16) effective from a legal standpoint, at least for me, I
(17) need to be in my office in Las Vegas, Nevada where my
(18) practice is.
(19) **MR. GALATZ:** Do you think knowing your local
(20) bench and who your adversaries are locally presents any
(21) benefit to your client?
(22) **MR. CASS:** I think there is an absolute
(23) benefit to the client with having lawyers who are
(24) familiar with other members of the bar and the bench.
(25) That doesn't mean that lawyers who practice primarily

Page 45

(1) outside the state, but who otherwise become qualified to
(2) practice in Nevada should not be allowed to practice
(3) here.
(4) If they have a disadvantage because they know
(5) the judge, they don't the procedure, they don't know
(6) their adversary counsel, they either can get themselves
(7) up to speed and be effective. If they can't, the work
(8) is going to go to somebody else. I think the
(9) competition is going to take care of that.
(10) Certainly a lawyer who practices in multiple
(11) jurisdictions has a responsibility to do whatever is
(12) necessary to serve the interest of his clients so
(13) they're pleased from a business standpoint and comply
(14) with any court laws.
(15) **MR. GALATZ:** All major clients potentially
(16) can exert some influence on a law firm. I had an
(17) impression -- and it's only an impression. There is no
(18) -- I have no evidence, just an impression, but part of
(19) the impression I get is the firms that cross
(20) multijurisdictional lines, at least in some instances,
(21) have been almost captives of one or two major clients,
(22) and the fact that their firm goes across lines only
(23) makes them a larger captive.
(24) I don't have empirical proof. This is a
(25) feeling from what watching and discussing.

Page 46

(1) Have you any thoughts, comments on this
(2) concern? Potentially a local firm can be controlled,
(3) but it seems to be even more noticeable as an
(4) impression. That's all I can give it is an impression
(5) on the multijurisdictional?
(6) **MR. CASS:** I haven't studied it. I think
(7) certainly there seems to be a variety of types of firms
(8) that are involved here. Certainly my firm which has
(9) less than 40 lawyers in total is quite dissimilar to
(10) Snell & Wilmer, which has, you know, hundreds of
(11) lawyers.
(12) And so I think that perhaps there might be
(13) examples of firms who have come here who have as a
(14) primary client some corporation, an insurance company or
(15) some other entity that provides with it the lion share
(16) of its business.
(17) I'm not sure if that problem is exacerbated
(18) by the fact that it's a multijurisdictional law firm. I
(19) don't know that that's true.
(20) **CHAIRMAN WILSON:** Judge Hardesty.
(21) **HON. HARDESTY:** Mr. Cass, we kind of got away
(22) from your primary presentation, which was the subject of
(23) rule 199.
(24) My understanding is that our Supreme Court is
(25) going to ask this commission to make a recommendation as

Page 47

(1) to any changes to that rule. Do you endorse -- I
(2) believe it's ABA 7.1 and specifically under subparagraph
(3) A there is an issue concerning firm names which are --
(4) trade names. Could you comment on those two subjects?
(5) I think I have the correct section.
(6) **MR. CASS:** Trade name in terms of something
(7) other than a lawyer name in the firm name?
(8) **HON. HARDESTY:** First -- two questions -- do
(9) you endorse 7.1 and, if so, do you have any
(10) qualifications or concern about subparagraph A, I think
(11) the section that contemplates the use of trade names in
(12) lieu of an actual individual's name in the firm?
(13) **MR. CASS:** I would have to review 7.1 to see
(14) if it is consistent with the New Jersey rule which was
(15) recommended.
(16) **HON. HARDESTY:** So you're advocating the New
(17) Jersey rule?
(18) **MR. CASS:** I certainly view that as a
(19) reasonable starting point. Okay.
(20) With respect to the use of trade names,
(21) honestly I've given no consideration to that. We've
(22) never contemplated the idea of calling ourselves
(23) something other than the name of our firm.
(24) **HON. HARDESTY:** As a lawyer in Nevada what do
(25) you think about that, like Joe Blow's Bankruptcy Shop?

Page 48

(1) **MR. CASS:** I think it is extremely important
(2) that the public not be mislead. I think it's extremely
(3) important that the public not have a negative impression
(4) of the professionalism of the members of the bar.
(5) I also think it's important that law firms be
(6) able to communicate with the public in a way that is
(7) their choice. So in a way that doesn't answer the
(8) question.
(9) I think there has to be a balance struck. A
(10) blanket ban on trade names, no, I don't think that would
(11) be consistent with the rights of commercial free speech,
(12) and I don't think a trade name in general is necessarily
(13) misleading or unprofessional.
(14) So I guess in answering your question, I
(15) don't think that banning trade names in total would not
(16) be a good idea.
(17) **CHAIRMAN WILSON:** Thank you very much.
(18) I'm trying to move this calendar. I do see
(19) Judge Saitta in the audience. Do you with to speak?
(20) **JUDGE SAITTA:** I do not. Thank you very
(21) much.
(22) **CHAIRMAN WILSON:** Thank you.
(23) John Redlein.
(24) **MR. REDLEIN:** Good morning.
(25) John Redlein. I am currently employed by the

Page 49

(1) City of Las Vegas with the City's Attorney's Office, and
(2) as I made plain from the letter and the memo that I
(3) submitted in advance to the committee my focus here is
(4) very, very narrow. It's a concern that implies -- or
(5) implicates I should say no anticompetitive concerns on
(6) my part concerning my practice and it really is relevant
(7) insofar as becoming a concern for me because of my
(8) service to the bar and the state committee of moral
(9) character and fitness and relates specifically to
(10) unlicensed in-house practice.
(11) I don't want to repeat the arguments and the
(12) information that I have supplied in the memo, but I
(13) would ask that the commission be cognizant of the fact
(14) that we usually have a trio of alternative elements of
(15) definition of practice of law, and that is the practice
(16) of in-house eliminates the first and that is the
(17) representation of a person in court.
(18) The holding out aspect about whether or not
(19) one represents oneself to be an attorney again avoids
(20) the in-house practice of law because they haven't hung a
(21) shingle and gone out and mislead anybody that they're
(22) practicing in Nevada I do believe is relatively
(23) unimportant because it isn't up until a fee is paid that
(24) I think in this trade you could ever construe any
(25) damage, and certainly the greatest potential for damage

Page 50

(1) comes from that which flows after the fee is paid or
(2) when actual legal work is undertaken insofar as giving
(3) advice and drafting documentation.
(4) Finally, I would ask you to discount the
(5) argument that I have read of -- I've never had an
(6) unlicensed attorney practicing in the state actually
(7) offered to me, but I've read it and read of it being
(8) used as an excuse about the sophistication of the client
(9) weighing in this consideration.
(10) In my mind that argument is utterly useless.
(11) You can imagine --
(12) **MS. PISCEVICH:** How? I have a question now,
(13) though. What about sophisticated clients such as a
(14) utility company or telephone company or someone -- for
(15) example, they merge, Nevada and California merges with
(16) Texas or something and they're only going to be
(17) practicing for that client, but they obviously might
(18) need to do regulatory work or something else? Do you
(19) think that they should not be allowed to do what they're
(20) trained to do which is a very specialized area without
(21) taking the bar? Should they register and be subject to
(22) the bar?
(23) **MR. REDLEIN:** I believe that they should not
(24) be able to practice law in the state without the benefit
(25) of a license. Even on a narrow subject where they have

Page 51

(1) some expertise on is still very, very dangerous.
(2) To get back to the issue about the
(3) sophistication of the client, I can imagine a range of
(4) possibilities where the sophistication of the client
(5) cuts directly both ways in this argument, ranging from
(6) the unlicensed practitioner so bold to hang out a
(7) shingle on the street saying I do divorces, I do wills.
(8) The client may know this person is unlicensed, but says
(9) that's why I like to go to him, because he's cheap.
(10) **MS. PISCEVICH:** I'm not talking about that.
(11) I'm talking about a lot of these things are federally
(12) governed. A lot of the regulations you deal with are
(13) federal. Obviously there will be some state. That's
(14) what I'm saying.
(15) Do you think that that needs to actually be
(16) licensed to practice in Nevada if you're going to be --
(17) I'm using a utility company as an example, but it could
(18) be an interstate trucking company. It could be a
(19) securities issue. There's a lot of issues that involve
(20) more than just -- or a bankruptcy issue.
(21) **MR. REDLEIN:** Your example is particularly
(22) apt. I've had experience with that. It may be perfect
(23) example because they're concerned about federal law and
(24) FCC regulation primarily.
(25) Yes, my argument that that lawyer is more --

Page 52

(1) is -- the argument that that lawyer is more likely to be
(2) of value to that firm -- to that client without the
(3) benefit of a license is certainly present, can be made
(4) and has some validity; but as you said in your question
(5) clearly Nevada law is implicated often and you need to
(6) understand that even the largest interstate
(7) communication provider with its in-house attorney has
(8) innumerable questions coming to them every day that
(9) don't necessarily follow the interpretations of United
(10) States Code.
(11) **MS. PISCEVICH:** Can't you hire outside
(12) counsel?
(13) **MR. REDLEIN:** Of course you can. They
(14) usually don't.
(15) Let me go back to something that I believe
(16) may not be plain insofar as what it means when I said
(17) it, that is, the degree of the sophistication of the
(18) client shouldn't enter into this evaluation. As I said
(19) in one sense we might have a sophisticated client
(20) insofar as that client is merely knowledgeable that the
(21) attorney lacks a license and is therefore getting a
(22) bargain for the services. That's a degree of
(23) sophistication that the client is being hoodwinked.
(24) We can have the sophistication of the client
(25) 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 fronting 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) the 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
(2) all, but technically the person is admitted. They're
(3) just practicing out of state.
(4) **MR. WALLIN:** I'm more referring to actually
(5) engaging local counsel that has a legitimate Nevada
(6) presence but is a small law firm that isn't capable
(7) supposedly, but physically present in Nevada, they're
(8) able to accept practice. They just don't have the
(9) capability to handle a larger case.
(10) **HON. HARDESTY:** You're indicating a practice
(11) that, frankly, I'm familiar with before I became a
(12) judge. There's a lot of lawyers in Nevada who are
(13) essentially operating as fronts for out-of-state
(14) counsel; is that right?
(15) **MR. WALLIN:** Exactly.
(16) **HON. HARDESTY:** When that occurs, they're not
(17) controlling the litigation. In fact a lot of them don't
(18) even know what's going on. They just file the papers,
(19) get a fee at the end maybe.
(20) **MR. WALLIN:** Right. Hopefully they're doing
(21) their due diligence and reviewing the documents.
(22) **HON. HARDESTY:** But your experience is
(23) different from that, isn't it?
(24) **MR. WALLIN:** Again I was a young associate
(25) 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
(2) did most of the work. They did the filing, they did the
(3) appearances, and my assumption was they were reviewing
(4) all the documents to make sure they were comfortable
(5) with it, but most of the leg work was being done out of
(6) state.
(7) My point is if that's being done anyway, you
(8) should allow those firms that are doing the work to have
(9) a storefront here in Nevada so people can recognize
(10) this.
(11) **MS. STURMAN:** You were not associated pro hac
(12) vice in those cases?
(13) **MR. WALLIN:** No. Occasionally some of the
(14) senior partners would become associated that wanted to
(15) make an appearance, but a lot of times they would just
(16) have local counsel do the appearances.
(17) So that's one of my points.
(18) My other point is as to Mr. Galants' comment
(19) regarding the –
(20) **CHAIRMAN WILSON:** Galatz.
(21) **MR. WALLIN:** Galatz, excuse me.
(22) With regard to the hassles of communication,
(23) I just point out that there are a number of firms in Las
(24) Vegas, one of which I mentioned that I used to work for
(25) that have Reno offices, and I know there are specialists

Page 59

(1) in Reno that were not available in Las Vegas that were
(2) asked to do work that I would submit would be just as
(3) difficult as an out-of-state firm to communicate and
(4) coordinate with.
(5) **CHAIRMAN WILSON:** Let me ask you the harder
(6) question, and that is: What should the rule be? What
(7) should the judicial policy be as to a lawyer's
(8) accountability and who is doing the work and who has
(9) been admitted and is otherwise qualified?
(10) I understand what you're saying as to what
(11) the practice is. One of the reasons I guess we all
(12) ended up on this commission with instructions to have an
(13) inquiry is there is concern about the practice, whether
(14) the practice as you just described it is really in the
(15) public interest and is a good thing or is not a good
(16) thing.
(17) So in a perfect world what would you
(18) recommend?
(19) **MR. WALLIN:** As a member of the bar and a
(20) member of the public I would recommend whoever is doing
(21) the work is accountable.
(22) **CHAIRMAN WILSON:** How would you make them
(23) accountable if they were in Washington, D.C. and didn't
(24) have a ticket and referred the work to a Nevada counsel?
(25) **MR. WALLIN:** I think hopefully if you allow

Page 60

(1) firms to come in, then you have more to direct
(2) accountability for the work that is being done.
(3) **CHAIRMAN WILSON:** Why does this make them
(4) more accountable?
(5) **MR. WALLIN:** Because there is a name on the
(6) line.
(7) **CHAIRMAN WILSON:** What if the firm is
(8) required to registered? For example, as some have
(9) suggested, they have offices out of state, they have an
(10) office in state, but the firm itself is registered and
(11) the firm is subjected to sanctions if something goes
(12) wrong. Is that adequate?
(13) **MR. WALLIN:** I think that's a good start.
(14) **CHAIRMAN WILSON:** What takes it down the road
(15) to a solution, if that's the right word?
(16) **MR. WALLIN:** I'm appearing as a member of the
(17) bar and a member of the public. I think it's important
(18) that the members of the public understand who is
(19) representing them and they get fair and adequate
(20) representation on all matters.
(21) I think in order to do that they need to
(22) understand who is representing them and they need to
(23) feel the person representing them is accountable and can
(24) handle the matter.
(25) **CHAIRMAN WILSON:** Does that mean the lawyer

Page 61

(1) in Washington, D.C. somehow be disclosed and be
(2) accountable and be on the papers some way?
(3) **MR. WALLIN:** If that's the case, if they're
(4) be admitting pro hac vice.
(5) **CHAIRMAN WILSON:** If they are not, if it was
(6) a transactional matter or something less than requiring
(7) a matter in court?
(8) **MR. WALLIN:** Like my colleague prior, I think
(9) that's a totally different ball game. Most of my
(10) practice is federal law. Despite what you may think
(11) about that, there are also state law issues involved.
(12) **CHAIRMAN WILSON:** True.
(13) **MR. WALLIN:** I think -- I don't necessarily
(14) have all the answers.
(15) **CHAIRMAN WILSON:** I appreciate your being
(16) here. This is helpful. I'm just picking your brain
(17) because we're looking for answers and solutions.
(18) **MR. WALLIN:** Going to that question, there
(19) are a number of large casinos in Las Vegas, their
(20) securities work never hits the desk of a Las Vegas
(21) attorney, and it's a shame. I would like to see more of
(22) it. Most of it ends up in either Los Angeles or New
(23) York with some firm being able to handle it.
(24) **MR. TURNER:** Bill Turner here for just a
(25) second.

Page 62

(1) Comment was made by Mr. McAuliffe that we
(2) don't have the horsepower to handle certain types of
(3) complex transactions. That may be the case.
(4) Do you think that it would be helpful to
(5) subject the actual law firm to sanctions, but allow
(6) interrogatories and requests to produce in other matters
(7) on a very complex, difficult and lengthy and extensive
(8) case to be handled by a Washington law firm and by their
(9) paralegals in order to encourage clients and business to
(10) come to this state?
(11) I mean he made that comment we have four
(12) firms -- four firms could not take that client. The
(13) client deserves to be represented adequately. He needs
(14) the horsepower. What do we do about that?
(15) **MR. WALLIN:** First, I want to agree with
(16) Justice Becker, they are employees of the firm and they
(17) should be responsible for the work that they do.
(18) I'm not going to disagree with my colleague,
(19) but I think if a Nevada lawyer, whether it's an office,
(20) a satellite office of an out-of-state firm, we need to
(21) understand they're accountable for the work they do and
(22) subject to sanctions just like anybody else whether
(23) they're based in Nevada or not.
(24) **MR. TURNER:** Would it be acceptable to
(25) subject the firm as an entity to sanctions?

Page 63

(1) **MR. WALLIN:** Unfortunately I'm not an expert
(2) on professional ethics. I'm going to pass on that
(3) question.
(4) **MR. TURNER:** Thank you.
(5) **CHAIRMAN WILSON:** Thank you very much.
(6) Eva Cisneros.
(7) **MS. CISNEROS:** Good morning. I must admit
(8) when I --
(9) **CHAIRMAN WILSON:** Good morning.
(10) **MS. CISNEROS:** -- telephoned my appearance
(11) this morning, I was simply going to listen. I have
(12) several comments that I feel it would be beneficial for
(13) me to speak and state first off that I'm a licensed
(14) attorney in California since 1990, but I've been a
(15) resident of Clark County for seven years and I'm the
(16) managing attorney for Cisneros & Associates which is a
(17) staff counsel office for Travelers Insurance.
(18) My purpose is to speak for the in-house
(19) topic. My concern is that I distinguish our firm's
(20) practice from the points that were raised by
(21) Mr. Redlein, and that is, first of all, to say that all
(22) of our staff attorneys are licensed attorneys -- in
(23) fact, one of my staff attorneys is a former associate of
(24) Mr. Galatz -- and we do not and firmly take the position
(25) we are not engaged in the unauthorized practice of law.

Page 64

(1) We -- the purpose for the office's opening in
(2) '98 was a big factor of the onslaught of construction
(3) defect litigation that was expanding in this community,
(4) and because of that and because of the fact that
(5) Travelers Insurance insures a number of subcontractors
(6) who are all my clients was the purpose for opening the
(7) office.
(8) And having been here now for a few years,
(9) I've seen a lot of these firms come from different
(10) states because of this construction defect litigation,
(11) and I can speak to the fact that it is difficult to deal
(12) with these firms that simply have a name, but they're
(13) not physically here, and it does pose a problem.
(14) Unfortunately, I do not have any solutions to that, but
(15) simply wish to speak to that.
(16) **JUSTICE BECKER:** I just want to clarify, your
(17) sole client is Travelers Insurance?
(18) **MS. CISNEROS:** My clients are Travelers
(19) Insurance policyholders.
(20) **JUSTICE BECKER:** But that's all that you do,
(21) is represents individuals who are insured by Travelers?
(22) **MS. CISNEROS:** That is correct, in the
(23) defense practice.
(24) **JUSTICE BECKER:** So you're not an in-house
(25) counsel, but your sole purpose is represent whoever has

Page 65

(1) a policy with Travelers in any litigation that arises
(2) out of the state of Nevada?
(3) **MS. CISNEROS:** That's correct.
(4) **JUSTICE BECKER:** Just wanted to clarify that.
(5) **MS. CISNEROS:** Right. That's why I wanted to
(6) clarify the position of most insurance carriers that are
(7) opening offices in the state. We all are members of the
(8) Nevada bar. It's different from those situations that
(9) Mr. Redlein was referring to.
(10) I must qualify, Justice Becker, my firm does
(11) represent Travelers when Travelers is a named defendant
(12) and also in those cases involving subrogation rights
(13) wherein plaintiffs would be the named plaintiff.
(14) **JUSTICE BECKER:** As long as a conflict
(15) doesn't rise?
(16) **MS. CISNEROS:** Correct.
(17) As I said, most of -- a large majority of our
(18) practice is dedicated to the defense of subcontractors
(19) involved in this defect litigation, and in terms of our
(20) zealous representations of this client I think that any
(21) time that -- because one of the criticisms of in-house
(22) counsel with insurance companies is a conflict of
(23) interest between the insurance company and your client,
(24) and my point with that that I believe the commission
(25) needs to be made aware of is that any hint of potential

Page 66

(1) coverage issue or any type of other issue that would
(2) lead to a conflict question, we -- because we are aware
(3) of that heightened scrutiny at the onset we will take
(4) measures to either obtain written waivers or simply get
(5) rid of that case and send it to outside counsel.
(6) So we are very aware of that and ensure that
(7) our clients are protected in any way with that.
(8) I have sat down with subcontractors that are
(9) simply confused and do not understand what is going on
(10) with this litigation that's exploding here in the valley
(11) and I can assure them that their interests are of
(12) paramount concern and that we defend our clients with
(13) respect to that zealously.
(14) **CHAIRMAN WILSON:** Commission questions?
(15) Thank you very much.
(16) Why don't we take a short break and we'll
(17) resume in about five minutes.
(18) (Brief recess taken.)
(19) **CHAIRMAN WILSON:** Why don't we reconvene and
(20) we'll try and catch up with the clock.
(21) Jennifer Taylor, please.
(22) Is Jennifer Taylor here?
(23) Commissioner Biggar.
(24) **DISCOVERY COMMISSIONER BIGGAR:** [illegible]
(25) gentlemen, Tom Biggar, Discovery Commissioner for the

Page 67

(1) Eighth Judicial District Court.
(2) I had not planned to speak today, but after
(3) listening to a number of comments thus far I felt it
(4) might be important to at least be able to verify to you
(5) some of the things that are happening at least in the
(6) Eighth Judicial District Court involving out-of-state
(7) counsel as opposed to counsel who are Nevada counsel,
(8) live here and work here on what I would call a permanent
(9) basis.
(10) And I wanted to just -- I tend to see all of
(11) the initial appearances more or less by counsel in the
(12) civil litigation in Las Vegas, and I just wanted to
(13) point out a couple of things in this narrow area of
(14) discovery, and if you have any questions, I would be
(15) glad to respond to them.
(16) Contrary to what perhaps Mr. McAuliffe
(17) discussed, I usually see initially young counsel with
(18) one or two or three years experience first of all
(19) appearing on discovery motions, routine or otherwise;
(20) and I chagrin to say often when they are part of what
(21) may be referred to as a multijurisdictional law firm,
(22) that there are more problems than when I'm dealing
(23) strictly with local counsel.
(24) For example, unfamiliarity with the rules of
(25) procedure, whether they're local or in Nevada Civil

Page 68

(1) Rules of Procedure is commonplace, not that that does
(2) not sometimes happen with all young counsel or with more
(3) experienced counsel that are from another part of the
(4) state first appearing in the Eighth Judicial District,
(5) but it is almost routine and common when we're dealing
(6) with the firms who are multijurisdictional.
(7) Another thing that is especially troubling
(8) are the special requests that I get from out-of-state
(9) counsel, special requests for dispensation simply
(10) because of the fact that they are not here in Las Vegas,
(11) that they're in Sacramento or in Phoenix or somewhere
(12) else.
(13) And instead of a personal appearance, because
(14) that would be -- increase the cost for their client,
(15) they don't want to make an appearance on a discovery
(16) motion, but they would like to do it by telephone if
(17) possible, not for anybody else's convenience except
(18) their own.
(19) If they have to come down on a motion to
(20) compel, something as simple as that in civil litigation
(21) and they're successful on their motion to compel, then
(22) they not only want attorney's fees for the preparation
(23) of their points and authorities, for instance, but they
(24) want travel expenses and sometimes overnight lodging
(25) expenses to be added on.

Page 69

(1) And I felt -- always felt that that was
(2) unfair to tax the other side with that even -- whether
(3) or not there was a legitimate discovery dispute,
(4) assuming there wasn't for a moment, still should the
(5) other side be taxed for those additional costs because
(6) counsel has to come in from another jurisdiction.
(7) As Mr. Galatz pointed out, I have many
(8) problems -- looking at it just from the court viewpoint,
(9) many problems with communications on routine motions.
(10) Counsel do not gets their papers in -- this is the
(11) mundane part of the practice. They don't get their
(12) papers in on time. They don't abide by the local rules
(13) of -- for timely responses and replies and so forth.
(14) If there is a dispute at a deposition is
(15) another example I found. And I've been a long-time
(16) member of the California bar prior to the time I became
(17) a member of the Nevada bar, unfortunately, 30 years now,
(18) and the deposition procedures for California counsel I
(19) find a lot of times are simply not as professional as
(20) they are with almost all Nevada counsel.
(21) I don't know what to attribute that to except
(22) perhaps somebody mentioned the quality of the bar, the
(23) small bar, the litigation bar. In California one
(24) counsel on one side usually doesn't see counsel on the
(25) other side except in one case, so they feel a little

Page 70

(1) freer to make, let's say, objections that are not quite
(2) as well founded and engage in other kind of behavior
(3) that is not appropriate.
(4) And I, you know, don't cast dispersions;
(5) there are good attorneys and bad attorneys in all
(6) states. But I have found by experience and empirical
(7) evidence that that is the case.
(8) I had counsel the other day represent to me
(9) in court that late discovery, discovery that was running
(10) up toward the time of trial that was currently set and
(11) the trial had been set in Las Vegas was about two years
(12) since the complaint had been filed. Counsel in --
(13) California counsel informed me, well, this case was
(14) going to be to have continued any way because this
(15) two-year setting is like the quickest setting they had
(16) ever seen and obviously their request for continuance
(17) was going to be granted on that basis alone and I
(18) shouldn't worry about any discovery problems they're
(19) having.
(20) All it does is demonstrate they're unfamiliar
(21) with what we're trying to establish here in the state of
(22) Nevada.
(23) **CHAIRMAN WILSON:** What do you think the rules
(24) ought to be in terms of participation of out-of-state
(25) counsel whether it's pro hac vice or whether it's in a

Page 71

(1) firm that may have offices both in Nevada and Sacramento
(2) or Los Angeles or Texas?
(3) **DISCOVERY COMMISSIONER BIGGAR:** It
(4) should be pro hac vice in my opinion. You should not be
(5) practicing here unless you're a member of the Nevada bar
(6) or you've obtained pro hac vice status for each and
(7) every person who works on a particular case. That may
(8) sound like an extreme position, but I think that's the
(9) only position in good conscience that I could advocate
(10) as a representative of the court in what I do.
(11) I have -- I have excellent counsel who appear
(12) in my court quite often from Sacramento, specialize in
(13) medical malpractice defense. Even with them they have
(14) local counsel here in Las Vegas to do some routine
(15) appearances, and even though they have quite skilled
(16) counsel and I can understand why their clients would
(17) want to hire them on a regular basis, because they're
(18) quite skilled trial counsel, but they can't always
(19) appear on time, and when I get local counsel, they
(20) appear, but they're not prepared, they're not prepared
(21) to discuss the problems that we have in Las Vegas,
(22) whether it be with motion practice or scheduling
(23) practice, which is very important to the courts in
(24) trying to keep their schedules and keep a -- a good name
(25) for the courts, not just for lawyers.

Page 72

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

Page 73

(1) actual trial counsel? You would have the actual people
(2) involved in the litigation and you would also save a lot
(3) of time and money on costs for those individuals that
(4) are allowed to practice. Would that help?
(5) **DISCOVERY COMMISSIONER BIGGAR:** It
(6) probably help to some degree, but our system is not set
(7) up for that. We also -- it becomes a money problem for
(8) our particular court.
(9) And then that combined with the volume of
(10) business that has to be undertaken by my office, for
(11) instance, sometimes it's impractical to conduct a lot of
(12) telephone conferences.
(13) Federal court is a little different. They
(14) don't quite have the volume of business and are able to
(15) take a lot more time than we are in state court,
(16) particularly in the Eighth Judicial District.
(17) Like I say, it becomes a question of, well,
(18) none of the local attorneys would have to do that, but
(19) anytime we had out-of-state counsel, they would insist
(20) on that.
(21) **CHAIRMAN WILSON:** Judge Hardesty.
(22) **HON. HARDESTY:** I would like to supplement
(23) what the commissioner has said. In the Second Judicial
(24) Court our phone system will not accommodate more than
(25) two people on the telephone, and we have a system where

Page 74

(1) we have financial constraints that affect the funding of
(2) our operations, that limit our ability to do those kinds
(3) of things.
(4) I don't know whether the Eighth has that same
(5) kind of funding system.
(6) **DISCOVERY COMMISSIONER BIGGAR:** It's a
(7) continuing funding problem, I can assure you.
(8) The other thing I would say, even when
(9) Mr. McAuliffe was making some of his points, when you're
(10) an attorney practicing in one state, to do a competent
(11) job in my view it's extremely difficult to keep current
(12) even with the one state's law when you're practicing in
(13) state court and to try and keep current on the -- on
(14) whatever your areas of expertise, particular in more
(15) than one state it becomes too much of a burden.
(16) As you saw, Mr. McAuliffe was here just to
(17) speak on this one particular problem; but when he has to
(18) refer to ethical concerns, he had to fall back. His
(19) experience is with Arizona and Arizona opinions and he
(20) couldn't be expected to come up to speed on all of the
(21) Nevada background just to testify today.
(22) **MS. STURMAN:** Commissioner, I have a
(23) question. It's sort of a jurisdictional issue.
(24) There are many attorneys who while
(25) technically possessing Nevada licenses do not have a

Page 75

(1) physical presence in our state. They may claim to have
(2) an office, but when you investigate, actually go to the
(3) office and serve a paper, you find out it's really a
(4) post office box at a Mailbox Etc.
(5) When I call the local phone number, it's
(6) forwarded to San Diego or Sacramento or someplace else.
(7) Frequently this makes it difficult for us to serve
(8) things or conduct them at the last moment.
(9) Are we limited to coming to you for some
(10) assistance if there are discovery problems in a
(11) discovery matter or should there be some rule that you
(12) have a physical presence in the state of Nevada?
(13) **DISCOVERY COMMISSIONER BIGGAR:** It
(14) should be a rule.
(15) I have that problem a lot. There's a couple
(16) of key places, one being the Laughlin/Bullhead City area
(17) in Arizona and Nevada and will have one law office, and
(18) usually once again I point out these are not the major
(19) law firms, but these are the one- or two-person law firm
(20) who want to have a shop in both places, but don't want
(21) to spend the money to have an office in both places, and
(22) that impacts the court all the time.
(23) **CHAIRMAN WILSON:** Let me ask you the hard
(24) question, Commissioner. What should the rule be?
(25) **DISCOVERY COMMISSIONER BIGGAR:** As I said

Page 76

(1) before, I think that the rule should be -- and, of
(2) course, there's constitutionality questions, but I think
(3) the rule should be if you want to practice in Nevada,
(4) that you should be a resident of the state of Nevada,
(5) except for those occasions anybody is certainly entitled
(6) to the counsel they want, and if they live outside the
(7) state of Nevada, they should apply for pro hac vice
(8) consideration and come in here and practice.
(9) If the rule is that a firm can have an office
(10) here -- and I deal quite a bit for instance with
(11) Mr. Cass's firm, Snell & Wilmer not so much, but
(12) Mr. Cass's firm does it in a way, all of the attorneys
(13) -- at least all of the attorneys are here and we don't
(14) have this out-of-state communication problem.
(15) As far as those final decision questions and
(16) who should be responsible if it's coming from out of
(17) state, I really don't have the answer to that. But I
(18) think that if we have all attorneys who work on any
(19) particular file either must be licensed or come in on
(20) pro hac vice on any particular case, at least the bar,
(21) the state bar would have and the courts would have the
(22) ability to police their matters in a more proper way,
(23) and I think that opening the situation up making it more
(24) liberal than it is now would be a great mistake.
(25) **MR. TURNER:** My only concern would be that

Page 77

(1) the limitation, severe restrictions of the practice of
(2) law in Nevada, while very jealous of that practice,
(3) might limit the development and growth of business and
(4) transactional -- commercial transactions, sophisticated
(5) securities practice, and those matters that take areas
(6) of expertise that of yet we may not have the horsepower
(7) for.
(8) Do you think then we should expand the number
(9) of times pro hac vice is allowed? Because even with pro
(10) hac vice there's only a certain number of clients that a
(11) law firm can be given that. I think it's five times, is
(12) it not?
(13) **DISCOVERY COMMISSIONER BIGGAR:** [illegible]
(14) it's that many. I think there is a number wherein the
(15) court can extend --
(16) **MR. TURNER:** At its discretion.
(17) **DISCOVERY COMMISSIONER BIGGAR:** Right.
(18) **MR. TURNER:** Do you think any severe
(19) restrictions of the practice here can count down the
(20) ability of a client to have the representation by his
(21) lawyer that has an expertise and the horsepower? This
(22) concerns me.
(23) **DISCOVERY COMMISSIONER BIGGAR:** [illegible]
(24) why, but counsel come to Nevada and obtain a license.
(25) All right. I mean that's a routine thing.

Page 78

(1) Then they return to New York and are able to
(2) engage along with local counsel -- even firms like you
(3) have in the transactional business will often have local
(4) counsel, then I think everybody is responsible, and it
(5) would -- it would be possible to do it that way without
(6) unfairly restricting the practice or the growth, either
(7) one.
(8) **MR. TURNER:** Thank you.
(9) **CHAIRMAN WILSON:** Any questions?
(10) **MR. GALATZ:** Mr. Biggar, do you agree that
(11) the pro hac vice should be extended to the mediation and
(12) arbitration proceedings?
(13) **DISCOVERY COMMISSIONER BIGGAR:** [illegible]
(14) My impression was that as far as the court and
(15) arbitration program, which are minimum cases, I thought
(16) pro hac vice would apply to any case that was filed.
(17) I thought pro hac vice would already apply
(18) that, just participating in the arbitrations that are
(19) here in Nevada.
(20) **MR. GALATZ:** Thank you.
(21) **CHAIRMAN WILSON:** Thank you, Commissioner.
(22) Shirley Parraguirre, please.
(23) **MS. PARRAGUIRRE:** Good morning. I am Shirley
(24) Parraguirre. I'm the clerk of the Eighth Judicial
(25) Court.

Page 79

(1) Like Tom, I did not plan on making any
(2) presentation here this morning. I had breakfast with
(3) John Mowbray a week ago on another matter we're dealing
(4) with and the subject of this meeting came up and he
(5) requested that I submit two issues to you.
(6) John has told me that he's going to pass it
(7) on to the rest of committee.
(8) Since I've been in office I've asked our
(9) district attorney one having to do with rule 42,
(10) association of counsel, and the question is should I be
(11) requiring local counsel on the filing of foreign
(12) judgments by out-of-state counsel and the same question
(13) with regard to the issuance of foreign subpoenas.
(14) I received a draft district attorney's
(15) opinion that's several pages long, the end result being
(16) it's a good question; however, perhaps you ought to take
(17) it up with the local judges or the state bar because,
(18) one, that might be attendant to rule 42, but it would
(19) also fly in the face of being most costly to
(20) out-of-state people to enforce judgments. I do not have
(21) an answer to that.
(22) The second one I brought up with John, what
(23) is the obligation of my office to file documents which
(24) are not in proper form pursuant to at least our local
(25) rules 7.20.

Page 80

(1) Mr. Biggar and I see it all the time and has
(2) already alluded to the fact this is just not from
(3) out-of-state attorneys. We have local attorneys who,
(4) unfortunately, do it the same thing.
(5) But I am called out to our front counter on a
(6) fairly regular basis with either an out-of-state firm,
(7) they might have what you're calling as a storefront
(8) office here. The most recent was one day last week they
(9) wouldn't take my staff's answers for something so they
(10) requested that they speak to me and that was one of the
(11) issues.
(12) Although we do not, because of a couple
(13) Supreme Court decisions, refuse to file any documents, I
(14) did ask for guidance. This one particular out-of-state
(15) attorney was saying: Well, but I don't practice here
(16) very often and can you cut me a break here and let me
(17) file it regardless?
(18) So Mr. Biggar and I have discussed these
(19) matters from time to time.
(20) So there again I received a even longer I
(21) think draft DA opinion which basically said the same
(22) thing: We suggest you go to your judges or the state
(23) bar to see what they think.
(24) I haven't had any response yet from the local
(25) state judges, and that is why I believe John suggested

Page 81

(1) that I submit it to you, which I have done so. Whatever
(2) you decide I would be happy to abide by.
(3) **MS. PISCEVICH:** I'm just curious, I'm know
(4) there is a lot of pro per practice. If the pro per are
(5) not in the exact same form, do you still file those?
(6) **MS. PARRAGUIRRE:** Yes. When you see my
(7) request for the DA for opinion, I believe that is my
(8) last question: Should we be treating those differently?
(9) Do we take that as a practical matter? Yes.
(10) We basically take at this point anything that
(11) comes across the counter. Once in a while we will
(12) Receive Stamp something as opposed to filing it.
(13) The actual problem internally with my office,
(14) now we're sitting here keeping a lot of matters that are
(15) just received and we don't know when they've been
(16) corrected and come back across the counter. So now we
(17) just got them sitting there and they really serve no
(18) purpose. We do treat them differently at this point.
(19) **MS. PISCEVICH:** But if the pro pers are filed
(20) out of more fat, are the, quote, legal documents whether
(21) it's an out-of-state attorney or an attorney from a
(22) different counsel filed?
(23) **MS. PARRAGUIRRE:** Basically at this point we
(24) do all of them that way. If they come in, they file
(25) them whether they're in proper order or not. That's

Page 82

(1) part of the DA's opinion or request whether we should be
(2) doing that for Nevada lawyers.
(3) **MR. GALATZ:** How big is the problem? How
(4) frequently does this arise?
(5) **MS. PARRAGUIRRE:** On a fairly regular basis,
(6) Mr. Galatz. And we get, my guess is – and I don't
(7) recall the stats, but I think on the foreign judgment
(8) issue, I think we see 70, 80 filings per month that's
(9) done on foreign judgments and a large number on the
(10) subpoenas for foreign jurisdictions as well.
(11) I've had one local judge say, well, perhaps
(12) you shouldn't require that they have local counsel on
(13) the foreign judgments unless they begin execution
(14) proceedings here.
(15) Well, again what that poses with my office,
(16) if they walk to the front counter and they want
(17) execution issued, then we don't have the time to stop
(18) and go back and see whether or not it's a foreign
(19) judgment or whether they should have already paid their
(20) initial filing fee upfront prior to that.
(21) So although it's a good solution, it would be
(22) hard to make workable, I think.
(23) **CHAIRMAN WILSON:** Thank you very much.
(24) Debbie Amigone.
(25) **MS. AMIGONE:** I was just planning on

Page 83

(1) attending. I wasn't going to speak. But I just see
(2) that you have all these attorneys here and I just wanted
(3) to speak as possibly part of the general public.
(4) And I have worked in some law firms here in
(5) town as a legal secretary and I've also worked for some
(6) publicly-traded companies and I think there's two
(7) different issues that are concerns in my mind and that
(8) would be like the litigation and the court issues and
(9) also the transactional issues.
(10) And I agree that for the court issues, I
(11) really feel that you should be licensed in the state of
(12) Nevada to go in front of court and – excuse me, I'm a
(13) little nervous here talking, but when I was with the
(14) publicly-traded companies and they had their securities
(15) counsel, they actually started in Utah and moved into
(16) the state of Nevada and they wanted to keep their
(17) current securities counsel who they trusted and they
(18) knew, and so for them to have to hire securities counsel
(19) here in the state of Nevada, they weren't – they didn't
(20) want to do that because they were comfortable with who
(21) they had, and if they were to have to hire Nevada
(22) counsel and keep both of them, that was an extreme
(23) expense.
(24) And I just feel from the general public that
(25) a corporation for transactional matters, I don't know,

Page 84

(1) like the trademarks, federal type things, securities,
(2) they really should be allowed to have whatever attorney
(3) that they're comfortable with as long as they've had no
(4) problems with that attorney.
(5) **CHAIRMAN WILSON:** Any questions?
(6) Thank you very much.
(7) Leon Mead, please.
(8) **MR. MEAD:** Good morning. Thank you.
(9) To be honest I didn't realize I was going to
(10) speak before I got here.
(11) Basically my concern is overrule 199, and I
(12) will tell this panel that after rule 199 was held by the
(13) U.S. District Court as unconstitutional my firm did
(14) switch to our original name.
(15) I'm partner in the law firm of Gibbs Locher &
(16) Turner, and that law firm is based in Los Angeles, and
(17) we have – we did switch over.
(18) About a year after we did that we received a
(19) letter from state bar counsel, and, unfortunately, state
(20) bar counsel took the position that that particular rule
(21) only applied to the law firm of Lewis & Rocker and,
(22) therefore, asked to us switch back, and we did to great
(23) expenses.
(24) Unfortunately, reluctantly, we took the
(25) position that we would have to join that Lewis & Locher

Page 85

(1) lawsuit. So I want to disclose I am somewhat of an
(2) interested party in the challenge to rule 199.
(3) **CHAIRMAN WILSON:** We're all interested
(4) parties here --
(5) **MR. MEAD:** Thank you very much.
(6) **CHAIRMAN WILSON:** -- in one way or another.
(7) **MR. MEAD:** I'm also somewhat embarrassed,
(8) frankly, because having heard the comments of
(9) Commissioner Biggar and others about other --
(10) out-of-state counsel and their behavior, I am
(11) embarrassed.
(12) I started my practice in California and I
(13) practiced there in Los Angeles for five years before a
(14) client actually asked me, in fact, paid my time to take
(15) the Nevada state bar, frankly, because they were not --
(16) after going to ten different law firms in the state of
(17) Nevada, they were not getting their phone calls
(18) returned, they were not getting the level of service
(19) they were getting from my firm.
(20) They literally asked me and paid me to take
(21) the Nevada state bar and paid me to handle their
(22) matters. We began practicing under the law firm of Leon
(23) Mead, a partner of Gibbs Giden Locher & Turner.
(24) We rented an office from a local attorney
(25) here in Las Vegas and I was out here one day a week

Page 86

(1) whether I needed to be or not simply because we felt
(2) that was what the requirement was.
(3) We needed to have someplace where we could
(4) get the documents that were served on us, and we
(5) instituted a fax -- not fax, but a Federal Express
(6) system where every day whatever came into that
(7) particular office, if I wasn't in town, was Fed Ex'd to
(8) me directly and we dealt with it. That was in 1995.
(9) Within two years I was finding I was giving
(10) all of my California work to associates in my California
(11) office and I was spending a hundred percent of my time
(12) on Nevada matters.
(13) Shortly thereafter, in 1998, we decided to
(14) move here permanently and opened the office, and that's
(15) when I moved here. I am a resident of the state of
(16) Nevada and I consider myself for all intents and
(17) purposes a Nevada attorney.
(18) I will tell you that I don't like California
(19) lawyers. I don't like dealing with them. I didn't like
(20) dealing with them when I was in California, and
(21) discovery matters that Commissioner Biggar was talking
(22) about is routine, is a war.
(23) And one of the most pleasant things I found
(24) about being here was the professionalism and integrity
(25) of the bar of the state of Nevada. And so when I moved

Page 87

(1) here, I told my partners very deliberately that we were
(2) going to be Nevada attorneys and we were not going to
(3) open a storefront as you will, and we have tried very
(4) hard to make sure of that.
(5) We now employ -- well, we only employ three
(6) Nevada attorneys, myself included, here locally. Two of
(7) my partners are admitted in the state of Nevada although
(8) based in California.
(9) I can tell you the concerns raised by the
(10) various members here about who handles those matters, I
(11) assure you that I handle every matter and I am aware of
(12) every matter that comes through our office. Whether it
(13) originates with one of my partners in California as one
(14) of their long-term clients, those matters were referred
(15) to me and I deal with them and I am responsible to the
(16) state bar and to the courts here over those matters, and
(17) that is the way we deal with it.
(18) We do not have a problem where out-of-state
(19) counsel are working on matters, although I will tell you
(20) I do use my associates and paralegals in California to
(21) draft interrogatories and motions, however, every one of
(22) those motions is sent to me and a lawyer in my office
(23) here in Nevada comes to court and deals with those
(24) matters and only because they know what's going on.
(25) We do have once in a while where we have an

Page 88

(1) occasion to bring someone in pro hac vice. Sometimes we
(2) needed the added horsepower as well.
(3) I can tell you, though, we suffer from a
(4) business standpoint by rule 199. We are not able to
(5) have Gibbs Locher & Turner's name in any advertising
(6) here and we do suffer.
(7) We are a very boutique firm. We do
(8) construction law only, and I've written books on
(9) California mechanics lien law and Nevada mechanics lien
(10) law, and that's really all we do, is mechanics law.
(11) We have a national reputation. We have 45
(12) attorneys who are dedicated to nothing but construction
(13) law and are the biggest construction law boutique firm
(14) west of the Mississippi River. That brings a large
(15) amount of experience and a certain amount of trade name
(16) recognition, if you will, to Gibbs Locher Turner across
(17) the nation.
(18) I have been with that firm for 13 years and I
(19) bring a lot of that experience to me with the residents
(20) of the state of Nevada, and that's what we came here to
(21) do, to provide the residents of the state of Nevada with
(22) what we believe is our expertise in construction area
(23) law, and I think we've been successful here doing that.
(24) So that's my position.
(25) 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
(5) Nevada client knows precisely what they're doing, and so
(6) how do we make sure that they're properly advised that
(7) the situation occurs?
(8) And, secondly, how do we regulate? Because
(9) quite frequently when you tell me you're here one day a
(10) week, that's exactly what I don't want.
(11) **MR. MEAD:** I know.
(12) **JUSTICE BECKER:** That's your firm.
(13) **MR. MEAD:** That was what I was here in the
(14) very beginning.
(15) **JUSTICE BECKER:** That is what we want to make
(16) sure does not continue, regardless of whether you're
(17) licensed to practice in Nevada or not. That's not what
(18) we want.
(19) **MR. MEAD:** Absolutely. The only reason we
(20) were at that level is because we had very few clients.
(21) **JUSTICE BECKER:** I don't care. You didn't
(22) want to put in the time and effort and take a business
(23) loss on the Nevada branch on the risk that you would get
(24) more Nevada clients?
(25) **MR. MEAD:** No, it wasn't at that point we

Page 90

(1) didn't want to take the business loss. We were willing
(2) to do it. We need to allocate --
(3) **JUSTICE BECKER:** Why didn't you hire a Nevada
(4) attorney and open up the office and do all of those
(5) things instead of just having you be here once a month
(6) to pick up whatever you had from the local attorney who
(7) was fronting from you?
(8) **MR. MEAD:** That's not how we handled it. It
(9) wasn't a front. It was never that way. I was certainly
(10) aware of it. We did it for a business reason. We were
(11) planning to expand this office.
(12) **CHAIRMAN WILSON:** What would the rule be?
(13) **MR. MEAD:** You asked me two questions. The
(14) first one is I think the rule should be that a Nevada
(15) licensed attorney, okay, is responsible for the work and
(16) that the firm submit to the jurisdiction of the state
(17) bar.
(18) I know that my partners and I would have no
(19) problem in submitting to the jurisdiction of the state
(20) bar and in fact we do because --
(21) **CHAIRMAN WILSON:** How would the rule ensure
(22) that the Nevada lawyer be in fact responsible for the
(23) work?
(24) You testified that you came up here once a
(25) week and you had a hands-on control administering the

Page 91

(1) work of the Nevada office and responsive to the Nevada
(2) clients, but how would you write the rule to require
(3) that a Nevada lawyer in Nevada be responsible for the
(4) work and actually be hands-on as opposed to being
(5) passive and being a facility for a California lawyer who
(6) never sees the client, actually is responsible for the
(7) work product of the decisions made in the case?
(8) **MR. MEAD:** Let me back up one second.
(9) I will answer that question along with
(10) Justice Becker's first question, which was how does the
(11) client know who is going to handle it.
(12) **CHAIRMAN WILSON:** I'm not asking you to
(13) describe what you do. I'm asking you the harder
(14) question, and that is how would you write and articulate
(15) the rule.
(16) **MR. MEAD:** I understand.
(17) First of all, I would demand or require the
(18) rule to say there would be a disclosure to the client as
(19) to who exactly will be handling their case and that
(20) person be a Nevada lawyer and be fully prepared to
(21) handle it.
(22) That's how we do it. We disclose in our
(23) retainer agreement that I am going to handle a case as
(24) opposed to Ken Gibbs or one of the other partners who
(25) are not there.

Page 92

(1) Secondly, I would require that there be a
(2) local office, even a residency requirement, because I
(3) agree. I do not believe that when we were first here,
(4) that it was the best way to do it, and I was a big
(5) proponent that we need to move into this jurisdiction
(6) and be here, and it worked out great.
(7) It was not accurate and the best way to
(8) handle it in the beginning and I would change that
(9) policy now. If I was to open it differently, I would
(10) have somebody be here or have a local attorney a hundred
(11) percent of time.
(12) So I would require a residency requirement or
(13) somebody to ensure they would be here.
(14) **CHAIRMAN WILSON:** Are you saying the rule
(15) should require work done in a Nevada office of an
(16) interstate law firm be done totally by the lawyer in
(17) this state, by Nevada lawyers?
(18) **MR. MEAD:** I wouldn't say that. I wouldn't
(19) have a problem, but I would say that a local attorney
(20) must be responsible for that work and not just simply be
(21) a signatory on the document.
(22) **CHAIRMAN WILSON:** How do we define that? How
(23) do we define the responsibility of the Nevada law who is
(24) passing on the work product of a California lawyer?
(25) **MR. MEAD:** I think you make that individual

Page 93

(1) responsible for every activity that occurs in the case,
(2) and if they were not, if you run into a situation where
(3) like Mr. Galatz' practice PI – and I do construction,
(4) so we don't run into each other – what I would say is
(5) to address that particular issue, that could be an
(6) indication, okay, of a storefront and open – and an
(7) indication of an investigation if somebody's aiding or
(8) abetting in the unauthorized practice of law or whether
(9) or not it is a legitimate law practice.
(10) **CHAIRMAN WILSON:** Should the lawyers in the
(11) California practice of your firm be registered, be
(12) required to register with the state bar as California
(13) lawyers unlicensed in Nevada, but a member of a firm
(14) that has an office in Nevada, as participating in the
(15) work of a Nevada office?
(16) **MR. MEAD:** I don't know if an individual
(17) attorney, but I think certainly the law firm should
(18) register and subject to discipline.
(19) **CHAIRMAN WILSON:** That part is easy. I'm
(20) asking the tougher question, and that is I mean you say
(21) that the Nevada lawyer should be responsible and yet
(22) certain work, certain decisions are done by the
(23) California office by that firm.
(24) **MR. MEAD:** No, I'm not saying certain
(25) decisions are handled by the California law firm.

Page 94

(1) **CHAIRMAN WILSON:** How do you prevent that
(2) from happening?
(3) **MR. MEAD:** You make the Nevada resident
(4) attorney responsible and obligated to be responsible for
(5) the decisions that are made.
(6) **CHAIRMAN WILSON:** I guess the question I'm
(7) asking is whether the concept of responsibility is in
(8) the abstract or whether it has practical application on
(9) the ground.
(10) Sure, it's easy to say, well, the Nevada
(11) lawyer is going to be responsible for whatever the work
(12) product is, whatever work is done, whether it's done in
(13) California, whether it's done by a California lawyer who
(14) has never met the Nevada client, whether it's done by a
(15) law clerk in the California office.
(16) How do you provide as a matter of rule for
(17) accountability? It's easy to say the Nevada lawyer is
(18) responsible. That doesn't prevent the storefront
(19) operation.
(20) **MR. MEAD:** I'm not sure in any – no matter
(21) what rule you create.
(22) **CHAIRMAN WILSON:** The storefront operation is
(23) inherently dishonest going in as a matter of definition.
(24) **MR. MEAD:** I think I agree with you.
(25) **CHAIRMAN WILSON:** How do we prevent that and

Page 95

(1) allow it? If that's to be the policy of this state,
(2) assuming for the sake of discussion that we permit under
(3) 199 the practice in Nevada, the multistate firm, how do
(4) you provide as a matter of rule for accountability?
(5) **MR. MEAD:** I think that you do it as saying
(6) the Nevada attorneys are obligated to be responsible. I
(7) mean no matter – it's difficult to say as a matter of
(8) rule how would you stop it.
(9) We have rules that say you can't murder
(10) people, but people get murdered every day.
(11) That's what you have to do. You have to
(12) create a mechanism where a Nevada attorney has the
(13) ultimate responsibility and responsibility to the client
(14) and to the state bar for any matters that that firm
(15) handles in the state of Nevada and for those clients.
(16) You do that as a matter of rule saying they
(17) must be. If you find out later that they are not doing
(18) that or there is some problem, then you have a mechanism
(19) to discipline that lawyer and discipline the law firm as
(20) well.
(21) **CHAIRMAN WILSON:** Questions?
(22) **MS. PISCEVICH:** Are your dealings primarily
(23) litigation dealings or are you talking transactional?
(24) **MR. MEAD:** No. Litigation dealings, not
(25) transactional dealings.

Page 96

(1) **MS. PISCEVICH:** Do you have a suggestion for
(2) the transactional arena?
(3) **MR. MEAD:** I don't. I really am not familiar
(4) with the transactional arena to be able to comment on
(5) how it would function.
(6) **MR. GALATZ:** Could you live with words to
(7) which a local office must be retained which is actual,
(8) functional and staffed?
(9) **MR. MEAD:** Yes, sir.
(10) **MS. STURMAN:** Yes. If Mr. Galatz is
(11) finished, I wanted to follow up on pro hac vice.
(12) I guess one concern I have and why I'm kind
(13) of interested in Mr. Wilson's suggestion, I guess a
(14) concern I would have even though you're here and you
(15) have three other attorneys here and they're actually two
(16) attorneys in California who are also Nevada attorneys, I
(17) guess my concern would be there's 40 other attorneys in
(18) your firm.
(19) What's to stop all those other 40 people to
(20) practice law here with you as your associate lawyer?
(21) **MR. MEAD:** I don't think you can do that. We
(22) have rules that limit the number of pro hac vice.
(23) **MS. STURMAN:** That rule is effective and
(24) works?
(25) **MR. MEAD:** Certainly. We do not do that.

Page 97

(1) When we opened the Nevada office, it was my
(2) understanding it was going to be a separate,
(3) functioning, full-operating office.
(4) We don't handle that. And when I say that I
(5) use somebody in that office to help me, it's really sort
(6) of I don't have enough horses. But, no, I -- I think it
(7) would be acceptable to allow somebody to a certain
(8) number of degree to do pro hac vice.
(9) **MS. STURMAN:** It shouldn't be prohibited?
(10) **MR. MEAD:** No.
(11) **MS. STURMAN:** It should be allowed and
(12) regulated?
(13) **MR. MEAD:** Yes, in a certain situation. I
(14) have no problem with that.
(15) One other comment, if I can make it.
(16) Where we are functioning right now, the state
(17) bar has asked us to use the name of Mead Salamone &
(18) Sofen affiliated with Lewis Gibbs Locher & Turner. It
(19) is actually a misnomer. They actually told us we should
(20) not practice under the name Mead Salamone & Sofen,
(21) partners of Gibbs Locher & Turner. We are partners of
(22) Gibbs Locher & Turner.
(23) To have the state bar tell us that's how we
(24) should operate to me is more misleading than the
(25) affiliated names and, frankly, vitiates the purpose of

Page 98

(1) rule 199.
(2) **HON. HARDESTY:** Do you advocate ABA 77.1,
(3) and, if so, what's your view about the use of trade
(4) names?
(5) **MR. MEAD:** I would advocate 7.1 frankly. The
(6) use of trade names, frankly, I don't like the use of
(7) trade names for law firms. Whether or not that
(8) combination on commercial speech or not, I don't have an
(9) opinion. However, I don't really -- as a profession I
(10) don't think it's great to have Joe's Bankruptcy Shop as
(11) the name of a law firm.
(12) We are a profession, and, you know, that
(13) somewhat in my personal view demeans the practice of
(14) law.
(15) **CHAIRMAN WILSON:** Any other questions?
(16) Thank you very much.
(17) **MR. MEAD:** Thank you.
(18) **CHAIRMAN WILSON:** Anthony DeMint.
(19) **MR. DE MINT:** I'm not going to take a lot of
(20) time. I'm primarily going to speak to the transactional
(21) side, not the practice in front of a court of law.
(22) I'm not an attorney. One comment from the
(23) gentleman who didn't like California attorneys, I think
(24) all attorneys are just tools for business people to do
(25) transactions and business.

Page 99

(1) **CHAIRMAN WILSON:** Your business is what?
(2) **MR. DE MINT:** I'm an entrepreneur by
(3) definition. I guess a start-up company. I start a lot
(4) of public companies. I do a lot of merger and
(5) acquisition work, a lot of transactions, buy businesses,
(6) sell businesses.
(7) One thing I have experienced is wherever I go
(8) I need an attorney to opine on the laws that I'm doing,
(9) but most of it is federal securities work.
(10) Similar to bankruptcy or other specialities,
(11) I think California does recognize bankruptcy and
(12) different type of attorneys as specialists. I don't
(13) think the Nevada bar should have a problem with
(14) recognizing specialists and in the context of not
(15) practicing in front of the court of law should have a
(16) problem with other attorneys from out of state coming
(17) in.
(18) I think you run into a problem with it in
(19) front of the courts, but I don't think having counsel
(20) that has a good background, good education and good
(21) experience, which I think is a very good key, the
(22) experience side of it, allowing them to sign off of a
(23) document, if I enter into an acquisition agreement, that
(24) if he is not licensed in Nevada that he should not be
(25) able to draw up that contract for me.

Page 100

(1) I think that's inhibiting a business. If I
(2) find an attorney that I like, a law firm that I like and
(3) enjoy doing business with and I go to Florida to do
(4) business, I shouldn't be able to call them and say I
(5) need an acquisition agreement?
(6) **CHAIRMAN WILSON:** Ms. Sturman.
(7) **MS. STURMAN:** Mr. DeMint, may I ask if you do
(8) that, if you have a good Florida attorney you want to
(9) use here, say he gives you bad advice in Nevada on a
(10) Nevada transaction, who would you expect you would be
(11) able to complain to about that attorney?
(12) Would you expect Florida would act if he had
(13) done something unethical or the Nevada state bar office
(14) if he had a complaint? In other words, you as a client,
(15) where would you think you could go?
(16) **MR. DE MINT:** Since I'm a resident in Nevada,
(17) I would probably seek Nevada, you know, disciplinary
(18) action on that, because I would be primarily acting on
(19) my behalf out of Nevada.
(20) **MS. STURMAN:** I think you're probably right.
(21) I guess my problem with that is I'm not sure we would
(22) have the authority to discipline that problem.
(23) Furthermore, if we did, the state of Florida
(24) would recognize it. So I guess that's the bigger
(25) question for us, how do we protect you?

Page 101

(1) **MR. DE MINT:** One thing that I would suggest
(2) is maybe allowing for a registration process, a fee
(3) process which would be income to the state of Nevada and
(4) also a tenure or a practice requirement of somebody
(5) practicing for five years without disciplinary action by
(6) the state that they're coming from, so when they come
(7) and they draw something for Nevada, they register and
(8) pay the fee, that grants Nevada jurisdiction over that
(9) individual attorney.
(10) That's basically all the comments I would
(11) like to say quickly and just move on with it.
(12) **HON. HARDESTY:** Excuse me, Mr. DeMint. Just
(13) one other question I had of you.
(14) Suppose the attorney from Florida opined the
(15) Nevada corporation was valid and correct and so forth
(16) and that later turned out not to be true and it might
(17) have upset your offering, cost you money. Would you
(18) assume that you would be able to sue that lawyer for
(19) malpractice?
(20) **MR. DE MINT:** I would assume, yes.
(21) **HON. HARDESTY:** And would you have any
(22) concern that the malpractice policy might contain an
(23) exception that wouldn't cover it because the lawyer
(24) wasn't properly in Nevada?
(25) **MR. DE MINT:** As a business person I would

Page 102

(1) think it would be under my due diligence, if I'm really
(2) worried about an attorney's ability, to opine under
(3) Nevada law to check his insurance and other things and
(4) to make a business decision on whether or not I'm
(5) willing to make that risk.
(6) It depends on, I guess, the time and the
(7) amount of business you do with that attorney. I think
(8) if I was to engage a new attorney, I would definitely
(9) look at that if it was a transaction that warranted it.
(10) I think business people are in general smart
(11) people. I think attorneys are there to help, sometimes
(12) they hinder. And if it's a bad opinion on a transaction
(13) and you didn't do it, well, shame on me. I'll look at
(14) it the next time.
(15) And I think the attorney should pay for that
(16) as well. Maybe that's where the regulation part comes
(17) in. I don't think you're going to cure everything by
(18) putting in rules. I think there's got to be some
(19) post-disciplinary actions put into place and some stiff
(20) penalties amounts, and maybe that comes into having
(21) practiced for five, ten years before you can go into
(22) another jurisdiction without taking the bar.
(23) And I think that that needs to be when you
(24) don't have a problem and there's no -- you know, if I
(25) got burned by an attorney and I file a disciplinary

Page 103

(1) action, maybe it's with the state bar of Nevada, and
(2) they say no, you have to go to Florida, if I go to
(3) Florida, then they shouldn't be allowed for him to go to
(4) Nevada.
(5) I think good attorneys should not be
(6) penalized.
(7) **CHAIRMAN WILSON:** Thank you.
(8) Kevin Stolworthy.
(9) Kevin Stolworthy.
(10) David Amesbury.
(11) David Amesbury
(12) Jared Shafer.
(13) **MR. SHAFER:** Good morning, Mr. Chairman.
(14) Ladies and gentlemen. My name is Jared Shafer. I am
(15) the Clark County Public Administrator, have been for 22
(16) years. At the same time I spent 20 years as a part-time
(17) public guardian.
(18) Everyone in this room who has spoken is
(19) sophisticated. I'm not a lawyer, by the way. Nobody
(20) has discussed the average person. I work in the area of
(21) guardianship and probates. It's very narrow. But these
(22) are the people who will be taken advantage of if you
(23) allow out-of-state lawyers to hit and run, practice and
(24) go.
(25) We see a lot of this in the newspapers,

Page 104

(1) advertising trusts, advertising how to save money,
(2) advertising how to beat Social Security.
(3) I'm very concerned that we already have a
(4) plethora of attorneys crossing the borders who practice
(5) in a limited area to people that are emotionally upset
(6) already or up in age and don't have a sophistication of
(7) what we're talking about and they get whacked.
(8) I fix more probates and guardianships than I
(9) do trust work for the courts, fixing stuff and trying to
(10) reconstruct things. These people don't ask what are
(11) your Arizona admissions policies. They don't say to
(12) them: Who is going to handle my case?
(13) Mr. Mead had a very sophisticated client. He
(14) paid for Mr. Mead to take the Nevada state bar. Law is
(15) a business. A very sophisticated business, but it is a
(16) business. They try to make money. Lawyers try to make
(17) money.
(18) We have constraints on how we do business in
(19) the state of Nevada and every other state. Part of it
(20) is you have to get licensed in Nevada.
(21) I very much agree with Commissioner Biggar.
(22) I want to see every lawyer that practices to get
(23) licensed.
(24) Now, one thing I would like to see the state
(25) do is to go to specialization testing, so we have a

Page 105

(1) Securities & Exchange Commission lawyer who wants to
(2) come back and do securities and exchange work type
(3) stuff, he can get licensed.
(4) If we have PI people that want to come in and
(5) do PI work only, they can get licensed in that small
(6) area, and that could help. You want to do criminal
(7) work, you want to do appeals work, that stuff would
(8) help, I believe.
(9) But the little guy is not going to ask these
(10) questions. And if you just allow anyone to come in, do
(11) a case, leave, I'm going to be fixing it. And I don't
(12) like fixing cases constantly.
(13) I think it's bad enough locally. I think we
(14) need to keep people licensed. Foreign lawyers want to
(15) come in, there must be a reason. Why are people leaving
(16) Arizona? Why are people leaving California? This state
(17) offers a wonderful climate to bring business to and it's
(18) going to get better.
(19) By the way, I don't care about rule 199 and
(20) what we call a law firm. I leave that up to the
(21) experts. I don't quite understand because I talked to a
(22) lawyer. I talk to Mark Solomon. I don't talk to
(23) Lionel, Sayre & Collins. I know who my lawyer is. I
(24) talk to Patty Trent. She's a sole practitioner.
(25) I don't worry about the name on the door. I

Page 106

(1) don't think most people think in those terms of who the
(2) name on the door is, Lionel Sayre & Collins. They know
(3) who they're dealing with. If it gets passed down, then
(4) they have problems.
(5) That's my feelings and I think that's the
(6) general feeling of the public, people who aren't
(7) represented here today.
(8) I'll entertain any questions and say thank
(9) you.
(10) **CHAIRMAN WILSON:** Are you saying that the
(11) problems you've had have been caused by Nevada lawyers
(12) who are not competent or out-of-state lawyers who aren't
(13) admitted to practice here who also are not competent?
(14) **MR. SHAFER:** How much trouble can I get
(15) myself into?
(16) The problems I run into are by people who
(17) practice a portion of law that they don't understand.
(18) The problem with out-of-state lawyers, I can't get an
(19) out-of-state lawyer to perform the work we need within
(20) the time constraints.
(21) I have had to deal with the IRS because of
(22) someone who passed away. On a 706 you have nine months
(23) to file, we can close a case. I don't care how many
(24) millions of dollars it is, a good lawyer can close – I
(25) did a 30 million dollar probate and we did it just at 24

Page 107

(1) and a half months. It does not need to take forever.
(2) **CHAIRMAN WILSON:** So all of this is subject
(3) to in effect the jurisdiction of the probate court?
(4) **MR. SHAFER:** What I do is, yes.
(5) **CHAIRMAN WILSON:** And the lawyers who cause
(6) these problems for your clients, their work also is
(7) before the jurisdiction of the probate court?
(8) **MR. SHAFER:** Some of it isn't.
(9) What happens, I have lawyers out of state
(10) representing heirs or beneficiaries. My lawyers can't
(11) talk to the heirs and beneficiaries. I can. We try to
(12) get them to comply with us. Social Security number, the
(13) simplest thing.
(14) **CHAIRMAN WILSON:** Should they be qualified to
(15) have Nevada counsel?
(16) **MR. SHAFER:** No. The probate can hire them
(17) for heirs that weren't here. That's not the problem.
(18) The fact is we have lawyers from out of state who don't
(19) comply. I don't want to see – that's what they're
(20) doing, by the way. People coming into Nevada, I speak a
(21) lot to seniors: I have a will drawn in New York. Is it
(22) good? Yes, it's good in Nevada. Have you reviewed it
(23) lately? Well, I'm going to call my lawyer in New York
(24) and have him take a look at it. When did you write it?
(25) 21 years ago. And they're still going to use the same

Page 108

(1) lawyer but they're living in Henderson or Green Valley.
(2) Then what's worse is I get them after they
(3) passed away and the son calls me from New York and says:
(4) My lawyer in New York is going to handle it. I hate to
(5) tell you, sir, no, he's not.
(6) If you allow them to just come in and hit a
(7) case and go, there's got doing to be any controls.
(8) Easiest place to rip somebody off. You make the
(9) mistake, you cover it.
(10) **CHAIRMAN WILSON:** Judge Hardesty.
(11) **HON. HARDESTY:** I don't believe I've ever
(12) seen a Supreme Court rule 42 application in a probate
(13) proceeding. Is that something we should consider?
(14) **MR. SHAFER:** You're going to have to explain
(15) rule 42.
(16) **HON. HARDESTY:** Do you think that the lawyer
(17) representing the heirs should submit to the jurisdiction
(18) of the court in a formal application process much the
(19) same way?
(20) I did some – a lot of probate and trust work
(21) before I became a judge, and you're right. There are a
(22) tremendous number of situations in which lawyers are
(23) representing heirs, they're on the fringe of the probate
(24) proceeding that are actively involved in the process.
(25) **MR. SHAFER:** Your Honor, from my own

Page 109

(1) perspective I don't think that matters. I'm so
(2) aggressive that they don't bother me too much.
(3) From the general person, if you had a son or
(4) daughter probably that's doing the estate for mom and
(5) the lawyer is in the East representing the other kids,
(6) it might not be a bad idea, but I don't know how you can
(7) enforce it. He is not truly representing them in front
(8) of the court. He's just covering their bases and
(9) answering the questions.
(10) **HON. HARDESTY:** But what's happening is the
(11) lawyer in New York or Utah or wherever is drafting the
(12) petitions and so forth and they're being filed pro per
(13) by any number of people and there's a tremendous amount
(14) of legal advice taking place in the probate
(15) administration where the executor is acting on their own
(16) with the advice of out-of-state counsel. Isn't that
(17) true?
(18) **MR. SCHAFER:** That's true.
(19) **CHAIRMAN WILSON:** You don't have a magic
(20) answer?
(21) **MR. SHAFER:** You license them all if you
(22) practice in Nevada. My magic answer is have everyone
(23) certified in specialties.
(24) **CHAIRMAN WILSON:** You don't have a magic
(25) answer for us. Okay.

Page 110

(1) Michael Ryan.
(2) Michael Ryan
(3) Richard small.
(4) Richard Small.
(5) Michael Small.
(6) Michael Small.
(7) Berna Rhodes-Ford.
(8) **MS. RHODES-FORD:** I have no comment, but I
(9) just want to clarify for the record that the name of my
(10) firm is Hicks & Walts.
(11) **CHAIRMAN WILSON:** Kym Cushing.
(12) **MR. CUSHING:** Good morning. My name is Kym
(13) Cushing. I am a member of the Nevada law firm of
(14) Edwards Hale Sturman Atkin & Cushing. Gloria Sturman is
(15) my partner and we have an office here in Las Vegas.
(16) My comments are directed to two particular
(17) areas, both are practical in nature. My experience of
(18) working with out-of-state lawyers, I have been here for
(19) ten years. I'm a partner.
(20) I can tell you I have practiced with
(21) out-of-state lawyers on a number of cases and I usually
(22) get a P.O. Box, I usually get a 1-800 number. I don't
(23) know who I'm talking to half the time. I get
(24) out-of-state counsel or staff. It is very difficult to
(25) work with out-of-state counsel.

Page 111

(1) When you try and schedule a deposition, it's
(2) difficult. When you try and arrange court hearings with
(3) out-of-state counsel, you have to work around their
(4) flight schedules.
(5) I live here. I work with Nevada lawyers.
(6) It's not difficult if they're here in the state of
(7) Nevada.
(8) In my experience out-of-state counsel don't
(9) know the Nevada state rules by which we follow. They
(10) don't understand our two-year statute of limitations for
(11) a personal injury case. They don't understand
(12) Commissioner Biggar's decisions on discovery matters.
(13) I can tell you I have had many times when I
(14) have been working with out-of-state counsel in Chicago
(15) or New York by phone who tell me: Don't produce this.
(16) Don't produce that. And they hang up the phone. That's
(17) an easy thing to do.
(18) Guess who has to go and meet Commissioner
(19) Biggar and make an asinine argument in front of him and
(20) guess who gets sanctioned? The local Nevada attorney.
(21) It's easy for these people to live out of state just to
(22) blanketly tell you don't produce this or that.
(23) **CHAIRMAN WILSON:** These people are admitted
(24) pro hac?
(25) **MR. CUSHING:** Some of them are and some of

Page 112

(1) them aren't. In regard to the pro hac vice, yes,
(2) especially when they're case specific.
(3) I've also included in my comments for
(4) out-of-state claims people. I have a case right now
(5) where I'm working with a Chicago law firm and they don't
(6) understand Nevada rules at all. They don't why it takes
(7) us so long to get cases to trial. They don't understand
(8) Commissioner Biggar, but I tell you, if they're pro hac
(9) vice, we have marching orders. We're on the front line
(10) and we get sanctioned and our law firm's reputation is
(11) at risk.
(12) **JUSTICE BECKER:** Perhaps you don't want to be
(13) local counsel for these people.
(14) **MR. CUSHING:** Believe me, that has been
(15) discussed.
(16) The reason out-of-state lawyers are
(17) interested in Nevada, the business is here. The
(18) California lawyers have saturated the market on
(19) construction defect. This is our potential business.
(20) We're all lawyers in the state of Nevada. We should be
(21) worried about our business. They are taking away our
(22) business.
(23) We live here. We raise our families here.
(24) We pay Nevada taxes. We have Nevada business licenses.
(25) We're licensed in the state of Nevada. And these

Page 113

(1) out-of-state lawyers, they take away our business.
(2) My firm has lost business because of
(3) out-of-state lawyers and even pro hac vice in
(4) situations.
(5) Why make it difficult for out-of-state
(6) lawyers? If they want to practice here, they should
(7) move here, they should live here, they should work here.
(8) They should have an actual office in the state of
(9) Nevada. There should be a residency requirement of, I
(10) think, at least a year so they can start understanding
(11) some of our judges and our rules. They should be
(12) licensed here. They should have a Nevada business
(13) license. They should have a Nevada staff. And the work
(14) that is done by these lawyers should be done in Nevada
(15) by Nevada lawyers.
(16) Unless there's other questions that's all I
(17) have.
(18) **CHAIRMAN WILSON:** On construction defect
(19) litigation, how is it that -- what would you recommend
(20) that the rule should be with respect to -- these are all
(21) admitted on pro hac?
(22) **MR. CUSHING:** Or they will come out here and
(23) open up a P.O. box, have some sort of sham office and
(24) get admitted or maybe have a couple of attorneys take
(25) the Nevada bar, make appearances out here and then all

Page 114

(1) the work is done in San Diego, for example.
(2) That's how most of it happens, especially in
(3) the construction defect arena.
(4) **CHAIRMAN WILSON:** What should the rule be to
(5) address that situation?
(6) **MR. CUSHING:** I think they should have a
(7) office here, No. 1, and that the work be done here and
(8) that the Nevada lawyer be responsible.
(9) I don't know how you can draft a rule, but
(10) there should be someone in Nevada who is here five days
(11) a week during normal business hours that you can call
(12) for a problem, not someone with a 1-800 number in Contra
(13) Costa County. They should be here and have a Nevada
(14) license. There is no way you can stop someone from
(15) coming to Nevada.
(16) **CHAIRMAN WILSON:** You're saying there's a
(17) substantial problem here, especially in the area of
(18) construction defect --
(19) **MR. CUSHING:** In construction defect,
(20) asbestos, breast implant litigation.
(21) Insurance defense is one of our biggest
(22) issues. A lot of these insurance companies are hiring
(23) in-house counsel, but the in-house counsel are not from
(24) Nevada. What they do, they send someone out here to
(25) take the Nevada bar. Then all the work is done out of

Page 115

(1) state, and for court appearances they fly them in, and
(2) that's from firsthand experience. I won't tell you the
(3) insurance company, but it's a reality.
(4) **CHAIRMAN WILSON:** You're making two points.
(5) With respect to construction defect, you're saying there
(6) is a substantial amount of activity by out-of-state
(7) lawyers who may open a Nevada office. It's pro forma.
(8) It's not really a substantive office. It's a location,
(9) address, maybe a Nevada lawyer, but really the practice
(10) is in California?
(11) **MR. CUSHING:** Absolutely, especially southern
(12) California. There is a proliferation of southern
(13) California law firms that have infiltrated the state of
(14) California especially in the construction defect area
(15) and you can ask any construction defect firm in town and
(16) they will corroborate that.
(17) **CHAIRMAN WILSON:** What was the comment you
(18) made a moment ago about in-house counsel?
(19) **MR. CUSHING:** Certain insurance companies
(20) don't like in-house attorneys because they're too
(21) expensive and sometimes they don't tell them what they
(22) don't want to know.
(23) Say, for example, insurance company X, they
(24) hire their own attorneys and insurance company X is in
(25) San Francisco. They will -- but there is a claim in

Page 116

(1) Nevada. But the claim doesn't really come to Nevada.
(2) It goes to the San Francisco attorney's office who is
(3) affiliated with insurance company X. They say, oh, we
(4) got a claim in Nevada. Let's get someone out to Nevada,
(5) get someone licensed, and they use that as a pretext and
(6) they handle the claims in San Francisco, and wherever
(7) there is a court appearance, you don't know who you're
(8) going to get, but someone comes from San Francisco and
(9) makes the court appearance, but all substantive work is
(10) done out of state, and I know it's not a Nevada lawyer.
(11) **CHAIRMAN WILSON:** You have a Nevada lawyer
(12) who is licensed, but just the name on the license is
(13) used?
(14) **MR. CUSHING:** Absolutely, and it happens.
(15) **MR. TURNER:** What about the complaint that if
(16) he heard over a number of years that we simply don't --
(17) I'll raise this issue again with you. We don't have
(18) sufficient expertise with Nevada law firms to do a
(19) certain type of specialty work, nor horsepower, and
(20) clients complaining when they went to Nevada, they were
(21) given short shrift, not given proper representation, and
(22) very much more comfortable with out-of-state lawyers.
(23) **MR. CUSHING:** I tell them tough luck because
(24) they never gave us a chance.
(25) **MR. TURNER:** I'm talking about where the

Page 117

(1) chance was given and where the client is dissatisfied
(2) because that firm is spread too thin.
(3) **MR. CUSHING:** That may be true. There are a
(4) lot of good firms in this town and we all learn by
(5) experience.
(6) If client Z had a problem with one particular
(7) law firm, that's unfortunate, but that shouldn't reflect
(8) on everyone else. Give us the chance to learn. We all
(9) went to law school. We're not experts in everything.
(10) But I can tell you one thing, we can sure learn quickly.
(11) I'm not an expert in asbestos litigation, but
(12) I've got three cases now. I went to the books and
(13) learned it.
(14) **MR. TURNER:** Don't you think an affiliation
(15) with a firm outside this state that's had 40 years of
(16) experience in asbestos representation would be useful to
(17) you in learning that particular representation?
(18) **MR. CUSHING:** Of course it would be useful.
(19) They would have experience I wouldn't have.
(20) **MR. TURNER:** Don't you think the client would
(21) be better served?
(22) **MR. CUSHING:** Perhaps. This is Nevada. If
(23) you're here, play their game, play their rules.
(24) **MR. TURNER:** That's what we're trying to
(25) determine, what are the rules.

Page 118

(1) **MR. GALATZ:** Maybe the rule is there should
(2) be some obligation on the part of a Nevada lawyer to
(3) call in the specialist when needed. I called in Saulie
(4) Robbins' firm on the foam fire litigation case. As a
(5) matter of fact, I'm dealing with them on a drug problem
(6) case right now.
(7) So maybe the shoe is not so much necessarily
(8) entirely on the out of state, but perhaps part of what
(9) we need to do is say when you have a local lawyer
(10) involved – we've got a business client I've represented
(11) for 40 years. We work regularly with the San Diego firm
(12) on certain aspects of his problems. So maybe a reversal
(13) role a little bit is there should be some requirement
(14) that, yes, local is responsible, but it's part of
(15) local's responsibility that are obligated to recognize
(16) that there are occasions that you need specialized help
(17) that is available from other places.
(18) **HON. HARDESTY:** Well, in that regard that was
(19) part of the comment in Elko and the concern expressed
(20) there in light of the California decision that the
(21) out-of-state counsel would be expected to bill the
(22) client, get paid by the client, but under that decision
(23) wouldn't necessarily get paid by the client, that the
(24) fees would not be recoverable.
(25) So I think – I agree with you. I think you

Page 119

(1) should consult with people who have expertise in the
(2) area even if they're not licensed, but a concern
(3) expressed there by Elko counsel, when we do that, how we
(4) subject that firm to the risk of not being paid.
(5) **MR. GALATZ:** I always figured out a way to
(6) protect my fees.
(7) **CHAIRMAN WILSON:** Thanks very much.
(8) Charles Simmons.
(9) **MR. SIMMONS:** Good morning, ladies and
(10) gentlemen.
(11) I will also speak on behalf of Robert Ryder
(12) who was I think called earlier this morning.
(13) I, too, am a member of Ryder & Caspino, which
(14) is a Las Vegas law firm, and all my comments would apply
(15) equally to him as well.
(16) First of all, let me start out by saying I
(17) don't disagree with anything the prior speakers said to
(18) you about out-of-state counsel, particularly in the area
(19) of construction defect litigation practicing here in
(20) Nevada.
(21) Before I get to my substantive comments, I'll
(22) tell you a little bit our firm and tell you we are not
(23) one of those firms.
(24) Ryder & Caspino was opened up here in Las
(25) Vegas approximately four years ago by Rob Ryder and Mike

Page 120

(1) Caspino who are partners in the California firm of Brady
(2) Boric & Ryder.
(3) Brady Boric & Ryder has approximately 35 to
(4) 40 lawyers in Orange, California. We have an office in
(5) Walnut Creek, California, which has half a dozen
(6) lawyers, and we just opened an office in Scottsdale,
(7) Arizona, which currently has two attorneys.
(8) Ryder & Caspino has about a dozen – actually
(9) exactly a dozen Nevada-licensed attorneys, and we have
(10) two other individuals who are clerking with us who took
(11) the recent exam here in Nevada in July.
(12) This firm Ryder & Caspino was opened up by
(13) Bob Ryder and Mike Caspino approximately four years ago,
(14) and we did it the right way. What they did was
(15) immediately hire one Nevada licensed attorney and
(16) shortly after that two additional Nevada licensed
(17) attorneys who only practiced here in Las Vegas and in
(18) Nevada.
(19) Now, for the first two years Rob and Mike
(20) were traveling back and forth between Las Vegas and
(21) Orange, and, thankfully, that has decreased as time has
(22) progressed.
(23) We do not have any of the lawyers in
(24) California who are not licensed in Nevada handle any of
(25) the Nevada work. We have three attorneys who are

Page 121

(1) licensed at Ryder & Caspino in both Nevada and
(2) California. Some of those attorneys sometimes handle
(3) certain aspects of the Nevada cases, and some of them
(4) spend a lot of time flying back and forth.
(5) That has, however, decreased over the last
(6) four years. Now pretty much all of the work that we do
(7) is handled here in Nevada. We have a dozen attorneys.
(8) We have a full-time officer manager here that just
(9) manages the Las Vegas office. We have six full-time
(10) paralegals. We have approximately 25 employees.
(11) I am licensed in the states of New York and
(12) Nevada. I practiced in New York from 1989 to 1997, and
(13) I came here and have been practicing obviously in Las
(14) Vegas from 1997 to the present.
(15) Brady Boric & Ryder was actually requested to
(16) open up an office here in Nevada by their existing
(17) clients in southern California. They did not come here
(18) looking for business. They came here at the request of
(19) their clients, at least to our clients to get a certain
(20) quality of representation from southern California that
(21) they weren't getting here.
(22) The only thing that Ryder & Caspino shares
(23) with the other three affiliated offices is a common
(24) billing department and a philosophy on how we handle
(25) cases. Other than that we share nothing with them.

Page 122

(1) This is 100 percent a Nevada law firm.
(2) **CHAIRMAN WILSON:** You're saying all work done
(3) by your -- for all your Nevada clients, the work is done
(4) by your Nevada lawyers?
(5) **MR. SIMMONS:** We have three attorneys who are
(6) licensed both in California and here, and sometimes
(7) those attorneys handle certain aspects of the Nevada
(8) cases and sometimes have to fly here and cover some
(9) appearances.
(10) One of them actually was primarily
(11) responsible for trying the latest construction defect
(12) case which was recently tried to verdict by Judge
(13) Douglas a few months ago.
(14) We don't have any of the California license
(15) attorneys at any of our offices who are not licensed
(16) here handle any aspects of our cases.
(17) **CHAIRMAN WILSON:** So you would recommend that
(18) the rule be that lawyers who handle or participate in
(19) the handling of Nevada cases be licensed Nevada lawyers?
(20) **MR. SIMMONS:** I'm not specifically here to
(21) advocate that position, but I would not take an issue.
(22) That's my personal feeling.
(23) **CHAIRMAN WILSON:** Certainly they were in your
(24) Nevada office, but also if they were in an office in
(25) California or some other city?

Page 123

(1) **MR. SIMMONS:** Yes, sir. Because we've done
(2) it the right way, we have experienced slower growth than
(3) we would I think ordinarily have done, had we been using
(4) California attorneys to service our files.
(5) We have not done that, and because of that
(6) and because of the shortage of qualified attorneys here
(7) in Nevada we have been, unfortunately, growing slower
(8) than we would have liked. But that's the price that we
(9) pay and we're bound and determined to do it the right
(10) way.
(11) Our biggest concern is the firm name issue,
(12) and that is we would like to use the name Brady Boric &
(13) Ryder in all four offices. We're allowed to do that in
(14) Arizona. We're not allowed to do that here.
(15) The reasons why we would like to do that were
(16) set forth in a written submission that you all may have,
(17) and I don't want to belabor our selfish reasons why.
(18) I would like to address a solution instead,
(19) and that is what rules or guidelines can be put in place
(20) to protect Nevada citizens, Nevada businesses who could
(21) potentially be mislead in believing that someone could
(22) handle their file who can't.
(23) The first thing is fairly obvious. In the
(24) firm letterhead all firms need to be very specific in
(25) listing any person's name that appears on the letterhead

Page 124

(1) as being admitted in that particular jurisdiction.
(2) The second thing that we would suggest is
(3) that when you have a multijurisdictional practice, that
(4) the client be informed in writing at the outset, either
(5) in a retainer agreement, in which case those are
(6) required, or simply in a letter who is actually in
(7) charge of and is handling their file, and I would even
(8) submit that the client would need to sign and perhaps
(9) that could be filed somewhere.
(10) **CHAIRMAN WILSON:** You're talking about a
(11) document which would identify representation to the
(12) client as to who is going to work on the case and the
(13) client's acknowledgement of that? And that would be a
(14) condition of the engagement letter itself. That could
(15) be produced I suppose upon inquiry by the state bar, for
(16) example, if a question arose, a client, if a client had
(17) a problem with the quality of the work performed or
(18) other circumstances.
(19) **MR. SIMMONS:** Yes, sir. And I don't know
(20) that that's really required, but, unfortunately, because
(21) of the way some firms are operating I guess we're almost
(22) forced to in order to not be lumped in with those type
(23) of firms have more stringent requirements.
(24) We want to use the same name in all three
(25) states, and if this is one of the things that can be

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 be 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) **MR. FERENBACH:** Good morning.
(2) **CHAIRMAN WILSON:** Good morning.
(3) **MR. FERENBACH:** Actually the testimony has
(4) been quite interesting. And I'm not the president of
(5) the Clark County Bar Association as noted. I'm sure as
(6) you're aware one of your members is the president. I'm
(7) the president elect, but will assume the duties next
(8) year, and, you know, as I look at the makeup of the
(9) committee, I mean so many of you have been in the local
(10) bar that I really think any one of you could sit down
(11) here and say the same thing that I'm getting ready to
(12) say.
(13) I hope you had a chance to read my written
(14) testimony. I don't plan to go through that. I do think
(15) if I could just comment for a minute on personal
(16) experience on the benefit I think to the public, to our
(17) government and to ourselves as professionals having a
(18) cohesive local bar association where you're not just
(19) responsible to the judge or the client, but your
(20) reputation in the community is on the line every time
(21) you pick up the phone, every time you make an argument.
(22) I had an experience in the early '80s. There
(23) was a lot of articles in the bar publications about
(24) hardball litigation and there were law firms that came
(25) into this state in big cases which I was involved in and

Page 128

(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
(11) doesn't understand what's going on in this case.
(12) They'll say: Ms. X or Mr. X, do you think
(13) that really helps me in deciding a case to read what
(14) you're saying?
(15) But you know what? In a lot of jurisdictions
(16) those types of arguments are made routinely. And in
(17) fact in the early '80s in probably more oppositions to
(18) motions than not, there was a counter motion for rule 11
(19) sanctions. I think many of you will remember that.
(20) And, you know, it took a change in the rules
(21) by the federal courts to give that sort of opportunity
(22) to cure that type thing, and that cut it down.
(23) But to my mind it was the judges who really,
(24) you know, took a hand in it and made it clear to the bar
(25) that, you know, certain levels of behavior were expected

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 Gingus 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 not 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

Page 133

(1) your last meeting that was held in Elko, and, of course,
(2) I'll respond to any questions you have of me here this
(3) afternoon -- it's now this afternoon; I know it's been
(4) kind of a long day for you -- but it's my understanding
(5) that recently the president of the state bar, John
(6) Mowbray, had occasion to talk with Norm Kirshman here
(7) and invited him to be present today.
(8) And let me just give you a quick background
(9) on why Norm is here and perhaps would talk with you and
(10) entertain your questions today.
(11) At the last meeting I told you that in fact
(12) there were a couple law firms, both firms from Arizona,
(13) firms known as Snell & Wilmer and Lewis & Rocker who had
(14) sued me in my official capacity when I as bar counsel
(15) tried to enforce Supreme Court rule 199, and that matter
(16) is pending in federal court.
(17) Now, Mr. Kirshman, well, he's my lawyer, he
(18) represents me in that litigation, and that's relevant,
(19) of course, to this commission because of the fact that a
(20) few months ago the State Bar of Nevada did file in the
(21) Supreme Court of Nevada a petition asking that Supreme
(22) Court rule 199 be amended in a certain way, and in that
(23) court's wisdom they have referred that specific issue,
(24) that is, the issue of what should happen regarding
(25) Supreme Court rule 199, to this commission, and I

Page 134

(1) imagine -- I'm sure this commission will recommend a
(2) recommendation to the Supreme Court. Hopefully that
(3) will set up what we're doing today with Mr. Kirshman.
(4) **MR. KIRSHMAN:** As an advocate in a pending
(5) case, I really think it would be inappropriate for me to
(6) promote, to promote the arguments that we've made before
(7) the court in this forum.
(8) I certainly am able to answer any questions
(9) about the status of the case. I can answer questions
(10) about the issues that have been raised in the case, but
(11) I think that if I were to speak as a Nevada lawyer
(12) asking or suggesting modifications in policy or giving
(13) policy reasons, that might be considered inappropriate
(14) by Judge Dawson who is sitting now on motions for
(15) summary judgment by the plaintiffs, motions to dismiss
(16) by Mr. Bare on various and sundry legal issues.
(17) So I would -- I would prefer to answer -- or
(18) to decline to answer particular questions.
(19) **CHAIRMAN WILSON:** Let me put it this way, I
(20) don't know that you need to advocate here in this forum.
(21) You are the state bar position on any court. The
(22) question we have, which is different from that, is what
(23) should the rule be, what should the public or judicial
(24) policy be and why?
(25) Irrespective of that case and the issues that

Page 135

(1) case and what that court may determine, it seems to me
(2) you're fully capable and free to testify as to what the
(3) public or judicial policy ought to be and we need not --
(4) you don't have to argue a case here. We're talking
(5) about a subject matter independent of pending
(6) litigation.
(7) **MR. KIRSHMAN:** With that invitation, I'm
(8) prepared to respond.
(9) **CHAIRMAN WILSON:** Does that give you enough
(10) absolution to speak freely and honestly what the law
(11) ought to be?
(12) **MR. KIRSHMAN:** Absolution is more than I can
(13) anticipate, but I do believe the concern -- the concerns
(14) that have been addressed in the petition to modify rule
(15) 199 are things that I can speak to. That's the petition
(16) filed by the start bar to modify rule 199 to incorporate
(17) or to formalize a practice that has arisen over the last
(18) several years of use of a firm name in affiliation with
(19) a firm of licensed Nevada lawyers.
(20) Of course, that's unacceptable to the
(21) plaintiffs in the litigation, but my perception, my
(22) perception that the underlying concern that the Nevada
(23) Supreme Court should have is not so much the firm name,
(24) but whether -- whether nonlicensed lawyers employed by a
(25) state -- by a law firm where the firm name lawyers are

Page 136

(1) not dead, but are alive and may be -- and the partners
(2) of that firm may be exercising the professional judgment
(3) that the Nevada Supreme Court rules demands of the
(4) Nevada licensee.
(5) For example, a survey that we did -- and I
(6) would not go into names -- of a firm that would like to
(7) use its trade name -- and somehow that offends me, trade
(8) name. I would hope that we're somewhat above a trade.
(9) But they would like to use their trade name here in
(10) Nevada and employ in excess of 300 lawyers.
(11) Of the 300 lawyers approximately five or six
(12) are members of the Nevada bar. Three, four of them are
(13) in an affiliated office here in Nevada. The firm
(14) practices a broad range of disciplines, everything from
(15) soup to nuts in the business and commercial law fields.
(16) And I find it difficult to accept the proposition that
(17) the people hired in Nevada, licensed in Nevada, and the
(18) other four or five who are not physically in Nevada but
(19) have gone through the pain and suffering of the Nevada
(20) bar and are licensed in Nevada in many, many of the
(21) matters handled by that firm for a Nevada resident and
(22) businesses, I find it hard to accept the proposition
(23) that the ultimate judgments in the way those matters are
(24) handled are being made by the Nevada licensees.
(25) And the proposed modification to rule 199

Page 137

(1) that the state bar submitted addresses that issue and
(2) basically it says -- and I wouldn't have a problem, I
(3) really wouldn't have a problem -- I think that the name
(4) is not the most significant thing. It is the underlying
(5) exercise of judgment by a firm that may have 6, 700
(6) lawyers.
(7) **CHAIRMAN WILSON:** Justice Becker.
(8) **JUSTICE BECKER:** We heard some testimony
(9) earlier today, Mr. Kirshman, about some suggested
(10) concepts of how to deal with this. One was the concept
(11) that you just talked about, that only the licensed
(12) attorneys may be able to do the work on the case or the
(13) unlicensed attorneys must be -- or the licensed
(14) attorneys must be the individuals who have control of
(15) the case.
(16) Some others have been disclosures, that is,
(17) you have to disclose to the client exactly who is
(18) working on the case and who is licensed and who isn't
(19) licensed. Some things like that.
(20) I want to let you know those are some of the
(21) suggestions that have been made for allowing the use of
(22) the firm name, but making it clear to the client
(23) precisely who does the work and who has control of the
(24) work.
(25) **MR. KIRSHMAN:** I think those are very good

Page 138

(1) suggestions, but I think that -- I think that who does
(2) the work, who does the pick and shovel, who does the
(3) research in my view is less important than who controls
(4) the case; and if a -- and I think that's the essence of
(5) the concern that I have in the context of the overall
(6) scheme of Supreme Court rules as to the use of a firm
(7) name and going behind the firm name and looking at who
(8) controls, who exercises the judgment, what pressures
(9) exist on a lawyer of five or six years experience when
(10) the -- when the partner in charge of the file is not a
(11) Nevada lawyer.
(12) And I know that that's cumbersome and I doubt
(13) very much that the other 49 states have expressed
(14) concerns or have even tried to do anything about it,
(15) because when I lived in Los Angeles and I practiced in
(16) Los Angeles in the '80s, there was a proliferation of
(17) national firms opening offices, branch officers, all
(18) over the place, and what they generally did -- and my
(19) firm was approached at the time. We had about seven or
(20) eight lawyers and we were courted and we were offered a
(21) branch office under the name of the New York law firm;
(22) and when I visited the firm in New York, it was made
(23) very clear to me that in respect to certain types of
(24) cases and certain types of litigation and certain types
(25) of transactional matters, partner A, partner B, partner

Page 139

(1) C would be in charge, and that was the scenario
(2) presented. And me being kind of crusty and used to not
(3) taking orders too well, we never made a marriage.
(4) But I think that's typical, that's typical
(5) throughout the country. And those 49 states have
(6) probably made a decision that given the quality of the
(7) law schools today and given the quality of people that
(8) they hire, admission to a particular state's bar is not
(9) necessarily required or the most important thing, and
(10) therein lies the question that our Supreme Court will
(11) have to decide as to whether they feel to the contrary.
(12) I hope I've answered your question.
(13) **HON. HARDESTY:** Just to add to that, I think
(14) it's important who controls the litigation. The pick
(15) and shovel could actually benefit Nevada citizens where
(16) firms have developed extensive research on a particular
(17) subject matter. They can hold down billings and be
(18) responsible for not rebilling research that has been
(19) done before. Pattern interrogatories and some of the
(20) things can actually benefit the Nevada citizens, don't
(21) you think?
(22) **MR. KIRSHMAN:** I agree. The pick and shovel
(23) is in my opinion not the primary issue.
(24) **CHAIRMAN WILSON:** So your -- you in effect
(25) would advocate that the Supreme Court's policy, whatever

Page 140

(1) rule it ultimately adopts with respect to
(2) multijurisdictional law firm, that the ultimate
(3) responsibility, the substantive responsibility for a
(4) Nevada case be a Nevada admitted lawyer of that firm?
(5) **MR. KIRSHMAN:** I would recommend that unless
(6) our Supreme Court is willing to move away from --
(7) **CHAIRMAN WILSON:** Our question is what to
(8) recommend to the Supreme Court --
(9) **MR. KIRSHMAN:** I understand.
(10) **CHAIRMAN WILSON:** Our question is what should
(11) we recommend as a matter of public policy, and your
(12) suggestion is that the substantive responsibility for a
(13) Nevada matter be required to be handled by a Nevada
(14) admitted attorney of that multistate firm?
(15) **MR. KIRSHMAN:** Yes.
(16) **CHAIRMAN WILSON:** That applies obviously to
(17) litigation matters?
(18) **MR. KIRSHMAN:** I would think it would apply
(19) with equal or greater force to transactional matters.
(20) **CHAIRMAN WILSON:** That was going to be my
(21) next question.
(22) **MR. KIRSHMAN:** Sometimes the transactional
(23) matters can dwarf what would be at stake, you know, in
(24) run-of-the-mill litigation.
(25) **CHAIRMAN WILSON:** And are there areas

Page 141

(1) requiring a level of technical expertise that might not
(2) be satisfied by a Nevada lawyer?
(3) **MR. KIRSHMAN:** Quite possibly.
(4) **CHAIRMAN WILSON:** In that case what should
(5) the rule be?
(6) **MR. KIRSHMAN:** I think the rule should
(7) require informed client consent, particularly matters of
(8) patent litigation, literary property rights, SEC
(9) transactional, all litigation where at this point in
(10) time the expertise in a small legal community such as we
(11) have may not pass muster, and it comes -- it happens
(12) that some matter will come in and for whatever reason
(13) the client wants the Nevada lawyer to take an active
(14) role and the Nevada lawyer, mindful of his or her
(15) ethics, tells the client that this is going to require
(16) participation of someone with expertise that the firm
(17) doesn't have, and it's been my practice to get the
(18) client's informed consent to hire the expertise or in
(19) some cases to take a secondary role and have the firm
(20) with the real expertise take the lead, but the client
(21) must know that.
(22) **CHAIRMAN WILSON:** So the test would be not
(23) whether the firm -- that particular law firm had a
(24) lawyer of that expertise admitted to the Nevada bar; the
(25) test would be whether or not the specialized field is

Page 142

(1) not one very common in Nevada at all and simply as a
(2) practical matter is going to require somebody from out
(3) of town, so to speak?
(4) **MR. KIRSHMAN:** If that's the only place the
(5) expertise can be obtained. Or if the client happens to
(6) know independently of the law firm -- of the firm that's
(7) had a remarkable record of success and wants that firm
(8) involved and the association of a firm like that with
(9) the client's consent, that the firm or the expertise
(10) take the lead, I think that would relieve the Nevada
(11) lawyer from any violation of the Supreme Court rule.
(12) **CHAIRMAN WILSON:** That would be the caveat
(13) and I think the mechanics of the law would require that
(14) kind of consent be available and could be produced.
(15) Okay. Any questions?
(16) **MR. KIRSHMAN:** Thank you.
(17) **CHAIRMAN WILSON:** Thank you very much.
(18) Is there anybody else present today that
(19) wants to offer testimony?
(20) If not, we will close this hearing.
(21) (Hearing adjourned at 12:34 p.m.)
(22)
(23)
(24)
(25)

Page 143

(1) REPORTER'S CERTIFICATE
(2) STATE OF NEVADA)
) ss
(3) COUNTY OF CLARK)
(4) I, Wanda L. Barnes, Certified Shorthand
(5) Reporter, do hereby certify that I took down in
(6) Stenotype all of the proceedings had in the
(7) before-entitled matter at the time and place indicated
(8) and that thereafter said shorthand notes were
(9) transcribed into typewriting at and under my direction
(10) and supervision and that the foregoing transcript
(11) constitutes a full, true and accurate record of the
(12) proceedings had.
(13) IN WITNESS WHEREOF, I have hereunto set my
(14) hand and affixed my official seal in my office in the
(15) County of Clark, State of Nevada, this _____ day of
(16) _____, 2001.
(17)

(18) _____
Wanda L. Barnes, CCR No. 676, RPR
(19)
(20)
(21)
(22)
(23)
(24)
(25)

ATTACHMENT D

TRANSCRIPT OF PUBLIC HEARING
OCTOBER 3, 2001
RENO

SHEET 1 PAGE 1

SUPREME COURT OF NEVADA

COMMISSION ON MULTIJURISDICTIONAL PRACTICE

PUBLIC HEARING

Wednesday, October 3, 2001

National Judicial College

Reno, Nevada

REPORTED BY: SUSAN E. THOMAS, CCR #655
Computer-Aided Transcription

PAGE 2

APPEARANCES:

THOMAS R. C. WILSON II, Chairman
MARGO PISCEVICH
HON. RONALD D. PARRAGUIRRE
BRIDGET ROBB PECK
MATTHEW W. ADDISON
HON. JACK B. AMES
WILLIAM A. TURNER
JOHN P. SCHIEGELMILCH
JOHN A. CURTAS
M. ANN MORGAN
JAMES W. HARDESTY
HON. NANCY A. BECKER
JOHN H. MOWBRAY

PAGE 3

Reno, Nevada: Wednesday, October 3, 2001: 9:00 a.m.

-oOo-

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.

PAGE 4

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

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 not
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.

1 Any questions?
2 MR. WILSON: Ross, do you know whether the state
3 agencies in general have any rules with respect to appearances
4 by attorneys and qualifications?
5 MR. DE LIPKAU: To the best of my knowledge, the
6 Department of Conservation only has the state engineer's
7 recent ruling -- recent meaning the last several months. They
8 will discuss that, that ruling. The division of environmental
9 protection, I am totally unaware of. I know they have a, I'll
10 say a special streamlined procedure for appeals to the
11 environmental commission. I think appeals to the
12 environmental commission should be in the same category as
13 administrative hearings before the state engineer.
14 MR. WILSON: Presently they don't handle it?
15 MR. DE LIPKAU: Not that I'm aware of, no. I've never
16 been confronted with an out-of-state attorney in disputed
17 matters before the environmental commission.
18 MR. MOWBRAY: Ross, can I ask you a question? Assuming
19 that the practice is considered the practice of law, would you
20 be proposing an extension of SC -- Supreme Court rule 42
21 providing the pro hac vice mechanism for appearances before
22 the different state agencies, similar to what exists now
23 before the courts of Nevada?
24 MR. DE LIPKAU: I'm not familiar with 42. I can't

1 answer the question.
2 MR. MOWBRAY: There's a rule that will allow
3 out-of-state counsel to file an application to move to be
4 admitted on a case by case basis, and there are provisions
5 that the out-of-state counsel does have to associate with
6 local counsel. And I think the rule is articulated that more
7 than five appearances in a three-year period would be
8 considered excessive, along those lines.
9 So there's not a real bright line but there's a
10 presumption that if you were to appear on a continuous basis
11 that you would be -- it wouldn't be a proper mechanism to use
12 that rule to gain admission. And the alternative would be to
13 sit for a Nevada bar exam and become a Nevada lawyer.
14 MR. DE LIPKAU: I prefer he or she sit for the Nevada
15 bar exam. I'm aware of that rule where out-of-state lawyers
16 are authorized to practice before, let's say, the district
17 courts on a case by case method. I would have no object if
18 the same procedure were utilized for administrative hearings.
19 MR. MOWBRAY: Thank you.
20 MR. WILSON: You're saying that there should be no
21 substantive difference between an appearance in district
22 court --
23 MR. DE LIPKAU: Absolutely not.
24 MR. WILSON: -- and an appearance before a state

1 administrative or regulatory agency?
2 MR. DE LIPKAU: That's exactly what I'm saying. In
3 fact, before hearings before the state engineer, I think the
4 state engineer hearings are much more important than the
5 court -- no offense to the judges -- because frequently, quite
6 frequently the decision made by the state engineer is a
7 hydrology-type question. It is a question that is decided by
8 him, supposedly, within his field of expertise. That decision
9 is normally not disturbed on appeal; however, the exception is
10 if he renders a decision based on law, then it's, of course,
11 de novo. But generally speaking, they're factual decisions
12 within the state engineer's field of expertise for which the
13 courts do not substitute their decisions. So basically, it
14 all takes place at the state engineer's office as contrasted
15 to the courtroom.
16 MR. WILSON: Do you have any sense of the degree of
17 practice before other state agencies or --
18 MR. DE LIPKAU: No, I don't. I'm pretty well limited
19 to the water rights area.
20 MS. MORGAN: Can I ask a question?
21 MR. WILSON: Yes.
22 MS. MORGAN: Ross, in your experience before for state
23 engineer where you've had an out-of-state attorney, have you
24 had any concerns that they did not have the expertise to

1 appear there?
2 MR. DE LIPKAU: Sometimes. Generally they're saying:
3 State engineer, here's how they do it in Utah or Wyoming, and
4 here's six western states, for example, that shift the burden
5 of persuasion or the burden of proof on an allegation of
6 forfeiture. It comes up all the time and to me it's quite
7 clear in Nevada, and affirmed by the Ninth Circuit, that this
8 is the law in Nevada. The burden does not shift. It's
9 brought up time and time again.
10 I've noticed people not misquoting law, but putting a
11 spin on it that: Wait a second, that's just not the way it
12 reads. That's just not the way it's done. I'm not calling
13 them incompetent. I'm saying they're inexperienced in some
14 areas of Nevada law and state engineer procedure with an
15 emphasis on here's how you should do it because my home state
16 does it this way.
17 MR. HARDESTY: That operates as a disservice, then, to
18 their client and an obstruction to the process?
19 MR. DE LIPKAU: I would say so, yes.
20 MR. TURNER: Do you think with the limitation that
21 you're suggesting that they all be required to take the Nevada
22 bar, does in fact harm the clients with the inability to find
23 representation here?
24 MR. DE LIPKAU: No. I think that there are enough

1 lawyers here. I don't know that I want to be so strict as to
2 say that an out-of-state lawyer can't go anywhere near the
3 state engineer's office. I think on perhaps a case by case
4 basis under 42, if accompanied by Nevada counsel, who's
5 responsible for the conduct of the out-of-state counsel, is
6 probably acceptable in the same fashion as an out-of-state
7 counsel trying a case before Judge Hardesty, for example.
8 MR. TURNER: Are the administrative procedures somewhat
9 different than the traditional procedures, that is more
10 relaxed as to findings of fact and law, that is it's more a
11 fact finding type of investigation?
12 MR. DE LIPKAU: In the most recent one I did, this
13 two-week hearing, I would say it is almost identical to a
14 courtroom before Judge Hardesty. The statute 533 states that
15 technical rules of evidence are not to be applied; however,
16 with half a dozen lawyers and an experienced lawyer hearing
17 officer, technical rules of evidence do in fact apply.
18 So I treat an administrative hearing in the identical
19 fashion as I would treat a regular civil trial over a
20 promissory note, deed of trust dispute. The witnesses are
21 under oath, the evidence is premarked, the witnesses discuss
22 the evidence, cross-examination applies, the breadth of which
23 is determined by the hearing officer as to how far the counsel
24 can go.

1 MR. HARDESTY: Mr. Chairman, I know Ross indicated that
2 he practices primarily in the water law area, but the question
3 about other agencies raises an interesting spectra. What
4 happens in gaming, Nevada tax commission? I would rather
5 imagine there is a lot of out-of-state counsel that appear
6 before the Nevada State Gaming Commission. What would be the
7 impact of a Rule 42 requirement or perhaps having to take the
8 Nevada bar? I'm not sure.
9 MS. BECKER: As to the Gaming Commission, the gaming
10 board, it is primarily in-state counsel, not out-of-state
11 counsel. But it is true before the PSC that there are a lot
12 of out-of-state counsel. When we get the petitions for
13 judicial review or when we see them coming up to the courts,
14 that's when you suddenly see local counsel coming in and once
15 you read the records there are no counsel added. And I know
16 that former Judge Mendoza indicated that there were a lot of
17 out-of-state counsel because they're brought in for some of
18 these regulatory proceedings by the utility person.
19 MR. HARDESTY: I'm wondering, Mr. Chairman, I know the
20 state bar staff is overburdened by the work we put on them
21 anyway, but I'm wondering if it wouldn't be a good idea to ask
22 the various AGs to comment about the impact to their
23 perspective agencies. PSC is a really good example.
24 MR. WILSON: Yeah, we ought to survey it.

1 MR. HARDESTY: And see what that would do.
2 MR. WILSON: Yeah, I don't think we have a sense of the
3 volume.
4 MR. HARDESTY: I think Ross is correct, in his area
5 it's a big issue and I suspect it could be in others, but I
6 don't know the impact down the stream of doing it in other
7 agencies.
8 MR. WILSON: I had tried to do an informal survey and I
9 didn't get a lot of information back on the level of -- what I
10 did was called the attorney general and she referred me to the
11 deputy and the deputy, I asked her to survey it and we didn't
12 really get much back as to any kind of volume or level of
13 practice. But I agree, you've got to believe that there's a
14 fair amount of practice both before the Public Service
15 Commission and the Gaming Control Board, Gaming Commission. I
16 don't know about the Tax Commission.
17 I got, generally, a blanket negative but I think we
18 ought to test that and see how many cases they have and what
19 the frequency of non-Nevada counsel are and whether they're
20 appearing on a pro hac basis or otherwise and at least get an
21 understanding of the terrain.
22 MR. DE LIPKAU: Okay.
23 MR. WILSON: Any other questions?
24 MS. MORGAN: In essence you were relating the

1 out-of-state attorney brought in a local Carson City attorney
2 who never said anything. Did you believe that the expertise
3 improved by virtue of having the local attorney sitting there?
4 MR. DE LIPKAU: No, he didn't do anything.
5 MS. MORGAN: If that's the case, how do you think that
6 Rule 42 might be of assistance?
7 MR. DE LIPKAU: Don't really know. I think we're faced
8 with a situation that you can't practice before the state
9 engineer unless you're licensed. And stepping one step back
10 from there is: Okay, let the out-of-state attorney show up on
11 a case-by-case method, maybe five within three years or three
12 within five years, whatever the rule is, having local counsel.
13 Local counsel need not know where the state engineer's office
14 is, he or she would just have a Nevada license.
15 So I don't know where to draw the line. Obviously I
16 would like to draw it as strict as I could, but then we get
17 into constitutional arguments, I suppose, if you can't
18 practice before any state agency unless you have a Nevada
19 license. The state engineer's office, some of the hearings
20 range from the incredibly sophisticated with half a dozen
21 experienced lawyers to two farmers representing themselves
22 with absolutely no expertise, and those may be more difficult
23 for the state engineer to try to have some rule of order, some
24 questioning. And what happens, one farmer tries to ask

1 another farmer a question and it turns out to be a speech.
2 And -- okay.
3 MR. WILSON: Some lawyers do that.
4 MR. DE LIPKAU: Well, that's true.
5 MR. WILSON: But it's not limited to the farmer.
6 MR. DE LIPKAU: So I don't know where to draw the line,
7 but I believe my conclusion is it should be strictly drawn to
8 prohibit, where possible, out-of-state people, attorneys, from
9 abusing the Nevada process.
10 MS. PECK: Mr. de Lipkau, how many lawyers would you
11 say in Nevada practice in your area?
12 MR. DE LIPKAU: Practice in what?
13 MS. PECK: Practice in your area.
14 MR. DE LIPKAU: Half a dozen to ten.
15 MS. PECK: Have you ever had circumstances where there
16 have been conflicts with someone's representation in their
17 case?
18 MR. DE LIPKAU: Conflicts of interest?
19 MS. PECK: Uh-huh.
20 MR. DE LIPKAU: All the time.
21 MS. PECK: So right now, what I'm hearing, is that the
22 body of lawyers who practice in this specialized area may not
23 be able to serve all the clients who would need representation
24 in Nevada?

1 MR. DE LIPKAU: I don't believe that's the case. I
2 think there are enough lawyers, water lawyers, to go around.
3 Obviously they range from very good to just learning but I am
4 unaware of any instance where the interests of a claimant,
5 water right holder, were lost by reason of the claimant not
6 being able to obtain the services of a licensed Nevada
7 attorney with some knowledge in water rights. And again, I've
8 seen very good and not so very good at administrative
9 hearings.
10 MR. TURNER: How often would you say that out-of-state
11 attorneys appear in water rights hearings?
12 MR. DE LIPKAU: I think it's becoming ever more
13 increasing. I think the state engineer or hearing officer,
14 Susan Joseph-Taylor, could answer that question a lot more,
15 but I have noticed more and more.
16 MR. TURNER: If you had a limitation, three to five
17 times in a five-year period, would that effectively preclude
18 their practice because they appear more often than that?
19 MR. DE LIPKAU: Some of them, yes.
20 MR. TURNER: So the client could possibly be prejudiced
21 by not being able to find enough sophistication in the area
22 they need?
23 MR. DE LIPKAU: I don't think so.
24 MR. WILSON: Back to the question of conflicts, you

1 indicated that was often the case but can you quantify that?
2 Is the frequency of conflicts among water practitioners, and
3 there are not many of them, is the frequency rate of
4 conflicts, does that limit the number of lawyers available in
5 Nevada who are licensed to practice here represent others in a
6 contested matter, do you think?
7 MR. DE LIPKAU: I don't think so. You get into it, or
8 I get into it -- and I'll say the Las Vegas sense. Working
9 with the Las Vegas Valley Water District, the SNWA, that
10 entity basically controls the water in Clark County.
11 MR. CURTAS: The Southern Nevada Water Authority.
12 MR. DE LIPKAU: Right, the Southern Nevada Water
13 Authority. That's over broad. Now, some entity outside of
14 the Las Vegas valley has a water right issue, it normally is
15 going to involve the water district or SNWA, which in my
16 particular case would conflict me out. It's happened a few
17 times and it's just a fact of life. People that practice on
18 the Carson River, for example, sometimes find themselves -- if
19 there's farmer A versus farmer B on the same segment of the
20 Carson River, in that case that attorney would be conflicted
21 out. But with, I'll say, the Northern Nevada lawyers, I have
22 found no instance where I'll say an experienced lawyer was
23 discharged by reason of a conflict and the alternate was
24 incapable of handling that person. I think there are enough

1 experienced water lawyers to go around.
2 MR. WILSON: Where do most of the out-of-state water
3 lawyers come from?
4 MR. DE LIPKAU: I would say Utah, some Denver. I've
5 basically had no problem with California. We have one in
6 Seattle who's representing a tribe in Southern Nevada who
7 appears at all kinds of hearings and things. And again, Ms.
8 Taylor can describe that.
9 MR. WILSON: Any other questions? Ross, thank you. We
10 appreciate you coming.
11 MR. DE LIPKAU: Well, thank you very much for having
12 me. Goodbye.
13 MR. WILSON: We don't have any particular order. Who
14 wants to go next? Why don't you both come together. The
15 seating is a little awkward here and I apologize for that.
16 MR. TURNIPSEED: Mr. Chairman, members of the
17 committee, my name is Mike Turnipseed, former state engineer
18 now director of the Department of Conservation and Natural
19 Resources. I am not a lawyer.
20 MR. WILSON: That would be an advantage some days.
21 MR. TURNIPSEED: I am a licensed civil engineer in the
22 states of Nevada and Utah. Now, Ross was a prior engineer and
23 went to law. I think he went in the wrong direction in his
24 career path, but nonetheless I've associated with Ross for a

1 long, long time, been in water resources management for a
2 little over 30 years, held hearings in the state of Utah, held
3 hearings when I was chief of the surface water section. I was
4 state engineer for ten and a half years, held many hearings
5 with myself -- I mean, by myself. Ms. Taylor came on board, I
6 don't know, '94?
7 MS. JOSEPH-TAYLOR: With the agency.
8 MR. TURNIPSEED: With the agency in '94. She was our
9 deputy AG before that. I wrote a letter to the state bar
10 prior to coming here today and you asked about some of the
11 numbers, and some of these I got from Susan. She says out of
12 the last 17 hearings held by the Division of Water Resources,
13 seven had had unlicensed lawyers representing clients and
14 there have been instances where more than one out-of-state,
15 unlicensed lawyer participated in a particular hearing.
16 This means that about 40 percent out of the last group
17 of hearings have had unlicensed lawyers representing clients.
18 The state engineer's office is a quasi-judicial office. It's
19 not to be interfered with. That is, the decisions are not to
20 be interfered with by the governor or anybody else in the
21 executive branch. There is no appellate procedure in the
22 executive branch of government. The state engineering
23 decisions are appealed only in 533 450 directly to the
24 district court, or in the case of the Carson or Truckee River

1 or Walker River to the federal court, and then, of course, the
2 judicial process takes it from there.
3 Ross said it correctly, the witnesses are sworn, some
4 are classified as experts or recognized as experts in their
5 field -- subject to objection, of course. Exhibits are
6 stamped for identification, subject to verification and
7 sufficient background on relevancy, et cetera, and then
8 they're either admitted into the record or not admitted into
9 the record.
10 All of that record, then, goes to the district court or
11 the federal court on appeal. There is no de novo, per se, in
12 the appropriation proceeding. There is an opportunity for a
13 judge to conduct a trial de novo in an adjudication procedure.
14 An adjudication procedure, if you're not familiar with that,
15 is a statutory process to bring all pre-statutory water rights
16 up-to-date, naming the proper owner, point of diversion, place
17 of use, extended use, et cetera, et cetera, et cetera.
18 Those are a lot different than the appropriation
19 procedure, and out of -- when I left the state engineer's
20 office a year ago last month, I left the new state engineer
21 with about 65 cases, appellate cases, either before district
22 court, federal court, ninth circuit or state supreme court.
23 We had not had one -- or I did not have one that went to the
24 U.S. Supreme Court, although we may have one coming up pretty

1 soon in adjudication.
2 MR. WILSON: What percentage does that represent, can
3 you guess?
4 MR. TURNIPSEED: Sixty-five cases?
5 MR. WILSON: No, of the ones up for judicial review of
6 some kind.
7 MR. TURNIPSEED: Oh, ten to fifteen percent.
8 MR. WILSON: Okay.
9 MR. TURNIPSEED: So I conducted my hearing much like
10 Judge Hardesty would in his courtroom; fair amount of decorum,
11 they're all recorded by a certified court reporter, that
12 record is, transcript of that record goes up to the court as
13 well. So in my view there's no difference between one of the
14 hearings that I held and the hearings that Judge Hardesty
15 would hold.
16 The, the -- like I said, I'm licensed in Utah and
17 Nevada and I know the licensing board in those two states
18 would not allow the practice of engineering in that state
19 without being properly licensed. I'm aware of one instance
20 where an out-of-state engineer was at a conference and handing
21 out business cards and our professional engineers board viewed
22 that as preparatory, at least, to practicing engineering in
23 this state.
24 The rest of the letter is pretty explanatory. I, I

1 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

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 I've had him on my side, we've been in the same litigation. I
2 would much prefer to have him on my side than against me, but
3 at any rate there are -- Susan was going to give out some
4 names of lawyers that she knows of that are licensed to
5 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 however, engineers are. And again, as long as I could get the
2 evidence that I needed to make a decision, I didn't consider
3 just their expertise as practicing engineering in this state.
4 If they were, for instance, hiring out as a consultant to one
5 of these, say, energy companies or something like that, I
6 would assume they would have to be.
7 MR. WILSON: As an expert witness?
8 MR. TURNIPSEED: As an expert witness, yes.
9 MR. TURNER: Do you think that the experience of
10 out-of-state counsel sometimes brings a water knowledge that
11 perhaps is helpful rather than insulating us to practicing
12 with just local lawyers in front -- in other words, can they
13 enrich the practice before you by bringing other experiences
14 and other law into your hearing room?
15 MR. TURNIPSEED: No, I don't think so. Of course the
16 standard practice of examining the witness, cross-examining
17 the witness, it does help if the lawyer has enough general
18 knowledge about hydrology to ask the proper questions. If,
19 if -- generally I would allow the examination and
20 cross-examination, redirect, recross sometimes, and
21 occasionally we'll hear testimony, if I didn't get the answers
22 that I wanted I would close that portion of the hearing and
23 ask my own questions of the witness, and that testimony was
24 not subject to cross-examination. That sometimes infuriated

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 by bringing in new concepts of law
11 or the idea of how it's practiced in some 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

1 on that issue or --
2 MR. TURNER: Which it sometimes appears to be.
3 MR. TURNIPSEED: -- or a little gray.
4 MR. SCHIEGELMILCH: If there's -- one of the questions
5 I have is that the administrative agencies all have their own
6 rules regarding conduct in the proceedings and the rule out
7 there for the state engineer, as I understand it, pretty much
8 says you can either be represented by someone called a
9 representative or if it's an attorney who associates with
10 counsel. That's generally a new ruling. If that's the case,
11 why doesn't the state agencies copy their regulations to --
12 not for them to practice? Don't you feel that the agencies
13 have the authority to do that?
14 MR. TURNIPSEED: The regulation that requires a lawyer
15 to be associated -- I mean, either a member of Nevada bar or
16 associate with a member of Nevada bar has been promulgated
17 through the regular regulation procedure. Most recent, I
18 think, was by letter -- that Susan could speak to that with
19 more intelligence -- but it was that the associate had to be
20 in the room.
21 MR. SCHIEGELMILCH: From what I understand, there's
22 always been -- that regulation has been there.
23 MS. JOSEPH-TAYLOR: It's relatively new.
24 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.
12 MS. JOSEPH-TAYLOR: Susan Joseph-Taylor for the record.
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. Mr.
17 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 orditch
23 case, the Carson River is called the Alpine case. In October
24 1995 the court remanded to the state engineer what it called

1 the GGID transfer case. They've been in litigation for about
2 15 years, now. It is actually over three hundred cases in one
3 case under one title. It's three hundred different water
4 right applications. We have lawyers representing -- well, the
5 tribe is represented on all three hundred cases by one lawyer,
6 not licensed in Nevada, who's been practicing here for 30
7 years. About 150 clients were represented by a firm out of
8 San Francisco. So they could say I'm not here on five cases.
9 I'm here on one case. So you're already around that rule.
10 MS. BECKER: How many of the people who are hiring
11 out-of-state counsel are out-of-state clients and therefore
12 they want to keep the same counsel they're familiar with? The
13 second part of my question is: On many of these decrees that
14 you're talking about you have multi-state issues; either the
15 water basins cede beyond state boundaries or the rivers or the
16 tributaries, et cetera, are coming from areas that are not
17 located in the state of Nevada and the people who are
18 appearing in Nevada, because Nevada court may have the decree
19 control, are actually people who live and reside out of state?
20 MS. JOSEPH-TAYLOR: Very few. You can actually answer
21 that question in two ways. The over three hundred cases that
22 were sent back in 1995, those are all farmers in Fallon. Then
23 you go to the adjudication world where we're adjudicating the
24 Owyhee, the Jarbridge and the Bruno Rivers in Northern Nevada.

1 They flow into Idaho and Oregon. But we aren't adjudicating
2 the Idaho and Oregon rights, we're only adjudicating the
3 Nevada rights.
4 In response to another question, I can -- and I've been
5 jotting these down as you've asked your questions. I can tell
6 you about lawyers from Utah, California, Colorado, Washington,
7 New Mexico -- and that was very quickly jotting down a few I
8 saw in the last few years. I actually had a lawyer say to me
9 once -- I was sitting in the Las Vegas Valley Water office
10 with Mike and I asked this lawyer representing an Indian tribe
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
14 downtown Las Vegas but this was what I was given.
15 I quickly tried to jot down names of water lawyers I
16 know. I could come up with 23 off the top of my head sitting
17 here. So I disagree with Ross, there are more.
18 MR. WILSON: That's Nevada licensed water lawyers that
19 are qualified to practice in that field, 23?
20 MS. JOSEPH-TAYLOR: Yes, uh-huh. And that was just
21 very quickly going by who I worked with in the last couple of
22 years.
23 We purposely drafted our hearing rules very broad
24 because Ross was right. We have, for example in these GGID

1 hearings, I can think of Mrs. Andre. She came in by herself,
2 I guided her through her case -- which was a little awkward as
3 a protestant -- but she's up against a lawyer, she's
4 representing herself. We have to have that broadness where
5 you can come in and represent yourself, you can have an
6 engineer come in and represent you or you can have a lawyer.
7 But these guys are really practicing law. We are doing
8 enormous questions of forfeiture, abandonment. It keeps going
9 to the federal court because these are decreed streams. The
10 federal court sends them to the administrative agency and then
11 they go back to the federal court. So occasionally -- I know
12 Justice Becker on some of these, occasionally it squeaks
13 through the supreme court -- and they will appear there and
14 local counsel is there. But I can list a couple of hundred
15 cases, easily, in the last couple of years that out-of-state
16 lawyers are practicing. The hearing Ross was just talking
17 about, we had four weeks of hearings this summer and I believe
18 there was one or two out-of-state lawyers in those hearings.
19 MR. WILSON: Why does a party, the employer agency,
20 retain an out-of-state lawyer as opposed to a Nevada lawyer?
21 MS. JOSEPH-TAYLOR: In Indian issues?
22 MR. WILSON: Any, just general.
23 MS. JOSEPH-TAYLOR: Because you're -- I'm just giving
24 examples. In Indian issues you find the best Indian lawyers

1 in the country were trained out of the University of Colorado.
2 some of them are still there, they specialize in that
3 practice. It is an extremely difficult area of the law. I
4 spent a year as a deputy AG studying that area just to try to
5 speak intelligently to these people. It is -- water law is
6 extremely specialized but then you start in federal/state
7 issues, the Indian issues. A novice cannot walk in and
8 adequately represent someone. And I'm not here to say these
9 lawyers are not representing their clients, they're doing a
10 heck of a good job.
11 MR. WILSON: Well, one of the questions we have is:
12 What's in the public interest? And this is not a trade
13 association protecting the market, the question is what should
14 the rule be, what should the law be with respect to the
15 practices, not just in Carson before the administrative
16 agencies. Is there a reason why people with, with interests
17 in this subject in Nevada hire lawyers from out-of-state?
18 MS. JOSEPH-TAYLOR: Not to be flippant, sir, but is
19 there a reason that I have to have a license, then, to
20 practice law here? My job requires it. And that is sort of
21 trade oriented, I guess, but should I be able to let my
22 license lapse and sit as an administrative hearing officer?
23 MR. WILSON: No, but I am interested in what's causing
24 this. What's the reason?

1 MS. JOSEPH-TAYLOR: What's causing all of these lawyers
2 to come in?
3 MR. WILSON: Yeah, and require -- for example, you just
4 eluded a minute ago to an area of your practice which requires
5 a great deal of expertise, much of which you find out-of-state
6 and much of which you find in-state.
7 MS. JOSEPH-TAYLOR: It's here, also. You can take
8 Gordon DePaoli, you can take Greg Walsh, you can take Dale
9 Ferguson, Steve King, Mike Mackedon.
10 MS. BECKER: I think he was referring to the tribal
11 counsel.
12 MS. JOSEPH-TAYLOR: No, I'm saying you can take all of
13 them and they are very well qualified for these issues. I
14 don't necessarily think the clients are being hurt, I'm just
15 seeing very substantial practices and my understanding of the
16 supreme court rules is you maintain a place of business, you
17 get most of your -- have a substantial practice here, you
18 should be licensed here, and that's where my gripe comes from.
19 MR. TURNIPSEED: Let me see if I can give it another
20 shot. I guess my fear is that since the state here does have
21 to rule on the record, I don't know what recourse Joe Citizen,
22 Nevada citizen would have if there were an event where there
23 were malpractice. He can't go to the Nevada bar and have this
24 lawyer's license or his practice scrutinized. He would have

1 to go to the state residence wherever the lawyer is licensed,
2 and I don't even know if they would allow that in a different
3 state.
4 MR. TURNER: But certainly doesn't the client obtain
5 the right to sue them for malpractice?
6 MR. TURNIPSEED: I suppose he does. I don't know what
7 kind of burden the client would carry.
8 MS. BECKER: I think one of the issues, there may be a
9 reason now for dealing with the unauthorized practice before
10 administrative agencies that didn't exist 30 or 40 years ago.
11 I disagree with counsel in terms of it's a real easy issue
12 because there are a number of cases in the United States that
13 have indicated that if an agency allows an individual to have
14 a non-lawyer represent them, as I understand state engineering
15 does, you can have anybody come up and speak for you, that you
16 cannot then say that that person has to be a lawyer licensed
17 in the state of Nevada and that doing so is the unauthorized
18 practice of law, because you can ask for anyone to represent
19 you and speak for you and that person would not be practicing
20 law.
21 And so those cases that are dealt with have made a
22 distinction in administrative agencies because traditionally
23 administrative agencies were intended to be fact finding
24 missions, they were intended to facilitate people being able

1 to present their cases. It wasn't supposed to be adversarial.
2 Now, the rule has changed a lot and therefore that underlying
3 philosophy may no longer be valid and I would like comments
4 with regard to that.
5 MR. TURNIPSEED: Let me see if I can comment on that.
6 I have allowed engineers to represent a client, licensed in
7 the state, and they -- generally I do the questioning if
8 there's opposing counsel then they can do the
9 cross-examination, but I do not let the engineer or surveyor
10 or hydrologist examine or cross-examine the witness. That's
11 purely in the field of law and in my view and it ought to be
12 the lawyers doing the examination and cross-examination.
13 Now, if they just want to get up and give evidence of
14 his report or his expertise, he says: The water flows this
15 way, it will not dry this guy's well up. I'll allow that in
16 but I will do the questioning. And again, allowing the
17 opposing counsel to cross-examine, but I don't allow an
18 engineer or surveyor to do the examination. Or they will
19 oftentimes submit a report stamped as an exhibit, opposing
20 counsel has an opportunity to question on its authenticity, on
21 its relevance, et cetera.
22 Back -- I was going to make another comment. The only
23 deviation that I can think of between our rules of evidence
24 and testimony and what a district judge would have, is in the

1 case of adjudication. Since we're trying to take evidence
2 that existed prior to 1905, I will allow hearsay evidence in
3 journals and people's diaries and things like that. There
4 just aren't that many people left around today that can
5 testify with firsthand knowledge of when a ditch was dug or
6 when a well was drilled prior to 1905.
7 MS. JOSEPH-TAYLOR: I have to respectfully disagree. I
8 just had a hearing where an engineer came in representing a
9 client on a forfeiture matter. He put on the whole case for
10 the town of Minden and our rules did not preclude that. And
11 more in response to your question, Justice Becker, my concern
12 is more of the substantial practice of law, not the occasional
13 come in. It's these people who are making careers in the
14 state, and I believe that violates the supreme court rules.
15 MS. BECKER: I understand that, but part of the issue
16 of the unauthorized practice of law has to deal with equal
17 protection. In other words, in the court system we do not
18 allow individuals to be represented by someone who is a
19 non-lawyer. A corporation must have a lawyer because a person
20 can't speak for a corporation, it's an entity in and of
21 itself. If you are Joe Blow and you want to represent
22 yourself, you can speak but you can't say: Look, I'm not very
23 articulate, I would like my brother or my sister to speak on
24 my behalf.

1 You do allow that in most administrative agencies, and
2 it seems to me that if we're going to propose a rule then we
3 need to weigh -- because I think in order to be constitutional
4 we would have to prohibit all of that representative
5 testimony -- and weighing that, if that is what we wish to do
6 or not wish to do for a public interest standpoint.
7 MR. HARDESTY: What is Ms. Joseph-Taylor's view on
8 that? I know you said they should all be licensed, but --
9 MS. JOSEPH-TAYLOR: I don't necessarily think so, Your
10 Honor. I think I've seen excellent representation by some of
11 these out-of-state lawyers on -- for example, let's take the
12 tribal issues on the Truckee River. If you don't have 30
13 years of institutional memory and have been through all of
14 this, I don't know that you can adequately represent those
15 people.
16 MR. HARDESTY: Well, I've attended hearings in front of
17 Mike and frankly it scares the hell out of me. I mean, it's
18 so complex. It's so complex --
19 MS. JOSEPH-TAYLOR: Yes.
20 MR. HARDESTY: -- that it is an area that almost goes
21 to a point where out-of-state lawyers aren't really the issue,
22 it's extent -- it's background, it's knowledge that's so
23 steeped in the law.
24 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
4 a lawyer out of Washington who was saying things and I was
5 just shaking my head and I think I said on the record: Then
6 you don't know what Nevada law is. So I have seen that.
7 MR. HARDESTY: But that gets to the point that I think
8 this commission needs to be concerned about. In addition to
9 complexity that you deal with -- I hope Mike doesn't, I hope
10 he stays alive a long, long time, you too -- but in addition
11 to the complexity of the subject matter, you're also dealing
12 with a very sophisticated approach to the way your hearings
13 are conducted. There may be relaxed evidence rules and so
14 forth in some administrative agencies, but not in your shop.
15 MS. JOSEPH-TAYLOR: It's going more towards a trial
16 setting all the time. The hearing I did a couple of weeks
17 ago, I was running eight or nine lawyers at the same time.
18 You have to bring some of that decorum to it or it turns into
19 a circus.
20 MR. HARDESTY: I just think the level of sophistication
21 in your area from a legal standpoint -- the rules you use, the
22 evidence you apply -- kind of dictates maybe we need to look
23 at the use of lawyers and regulated lawyers in Nevada.
24 MS. BECKER: Do you think that the registration

1 procedure we've discussed, the concept that maybe in certain
2 types of areas we don't want to require people to go through a
3 pro hac vice but we might want to require more of a
4 registration so that we can check backgrounds and make sure
5 that they understand that they're subject to the local rules
6 and disciplinary practices and things of that nature. So
7 there's ability to regulate them from a public interest
8 standpoint but not necessarily deprive the public of the
9 ability to hire out-of-state counsel requiring certain
10 regulations. And if you have no immediate response, just
11 think about it.
12 MS. JOSEPH-TAYLOR: Well, I was just trying to think
13 about it because we drafted the rule to associate, and to tell
14 you what, they have associated with people who don't have a
15 clue about water law. It's a body sitting there. I feel sort
16 of foolish but it was our rule. Do we start to enforce it?
17 I've had lawyers who associated with local counsel whose bar
18 licenses are suspended. I had to call and check on them.
19 So the state engineer, State Engineer Richey saying I
20 want them here, I want to see them, I want them in the room,
21 has taken it a step further. It's such a small group but it
22 is expanding, particularly with these power issues, these
23 tribal issues. It's almost exponential right now, and that's
24 part of our concern and part of the reason to associate. I

1 don't think it would hurt, it just brings a degree of respect
2 to the process.
3 MR. TURNIPSEED: Let me go back a few years. When I
4 first came to the state of Nevada we resolved a lot of
5 protested applications by what we called an informal field
6 investigation. If it's applicant farmer A and protestant
7 farmer B we would hold this field investigation out on the
8 edge of the ditch. Why do you not want the application
9 approved? Why do you need the application approved? The
10 field investigation report was written up and a decision was
11 based on that. Those were rarely appealed.
12 More and more, since more and more of the contested
13 applications are appealed, then of course, again, you have to
14 build a record otherwise you just get it remanded back and you
15 have to hold a hearing anyway. You might as well hold it
16 right up front. So more and more of the hearings -- or
17 contestations I should say -- are going to the full, formal
18 hearing where the testimony is sworn and the evidence is
19 marked.
20 Some, particularly the United States, I held the
21 hearings on the Yucca Mountain filings and there were nine
22 days of hearings and those U.S. attorneys didn't feel
23 comfortable so they associated with local counsel and he did
24 all of the examination, wrote all the briefs, et cetera.

1 MR. WILSON: The local deputy?
2 MR. TURNIPSEED: The local deputy. And the other way,
3 of course as Susan said, they associated with local counsel
4 whose bar license is expired or inactive or disbarred or
5 whatever. I don't know, those kinds of things.
6 MR. WILSON: What do you do in that case?
7 MS. JOSEPH-TAYLOR: I mentioned it to him when the rule
8 came out. He was the only person who called and complained
9 about how he needed local counsel and I said: You don't
10 follow the rules as they are now. Would you like to discuss
11 it with the state bar? And he was shocked I had checked.
12 So we just wanted to present to you that in our agency
13 there's a lot, and thank you for your time.
14 MR. WILSON: Thank you for your time.
15 Good morning.
16 MR. FOLEY: Good morning. My name is Dan Foley, I'm
17 the general attorney for Nevada Bell. I submitted testimony
18 and attached to that testimony were several examples from
19 other states where they have adopted some rules that I would
20 like you all to consider. Basically I'm focused on a topic
21 that's dear to my heart, and that's in-house counsel.
22 I've been in-house counsel for SPC Communications for
23 about 16 and a half years. SPC has approximately three
24 hundred attorneys scattered around through 20 states and

1 several are overseas. Nevada is unique in that it's one of
2 the few states that we actually have attorneys located in that
3 have a fairly restrictive reciprocity policy.
4 And so I'm advancing two recommendations. First
5 recommendation is that the commission think about adopting
6 rules that clearly delineate what an attorney can and cannot
7 do as an in-house attorney pending admission to the bar. That
8 varies from one state to another. Some states, for example,
9 have a fairly liberal policy in terms of allowing the attorney
10 to advise counsel or to advise their clients, in-house
11 clients, as well as to communicate with third parties on
12 claims and disputes. And about where they draw the line,
13 almost all states, is that if you're not admitted you can't
14 appear in court by yourself, you have to associate and deal
15 with local counsel.
16 And then there's some differences in terms of
17 administrative agencies. Some are more lax than others. I
18 have appeared, in my practice I've been in four, five states
19 now, and I've appeared before the West Virginia Public Service
20 Commission, the Texas Public Utility Commission, the Oklahoma
21 Corporation Commission. I have not been before the Public
22 Utility Commission here in Nevada. I came back a month ago.
23 But some of those agencies allow you to appear without
24 counsel, some require it.

1 But currently when I came, when I came to Nevada,
2 because I'm new to the state and I certainly don't want to get
3 in trouble with the bar early on, I asked our outside counsel
4 to -- what was permissible in Nevada. And the response that I
5 received was that it's all right to advise counsel internally
6 but you cannot communicate to third parties about claims and
7 disputes regardless if they're in an agency or court. Now,
8 that is a very cumbersome process, especially in Nevada where
9 you only take the bar once a year. Basically what that tells
10 you is that for about 15 months -- I came in August, the bar
11 is offered in July -- that for 15 months I cannot communicate
12 with a third party in the state of Nevada about a claim or
13 dispute.
14 Well, Nevada Bell, unfortunately, because we have a lot
15 of vehicles, we have a lot of employees, we have a lot of
16 customers, we get involved with a fair number of disputes from
17 time to time. And so it leaves you in the role of telling
18 your clients, well, this is what you have to tell somebody
19 even though you could probably tell them a lot clearer in
20 terms of what a statute of limitations is or what their
21 exclusive agreement is under a contract or something than the
22 client can or you must run out and get outside counsel to do
23 it for you. That adds up to an expense.
24 So the first set of rules -- and it's attached to my

1 testimony as Exhibit C -- is sort of a hodgepodge of rules
2 from other states that I've taken that seem to set some
3 reasonable parameters on what in-house counsel can do pending
4 the bar admission. And I cite some examples in my testimony
5 from other states where they have adopted similar rules. I
6 noticed -- and I haven't read the full report but I did read
7 the section involving in-house counsel from California.
8 The California Supreme Court Advisory Task Force had a
9 multijurisdiction practice report in July of this year and
10 they basically, not verbatim, but they adopted a similar set
11 of recommended guidelines for in-house counsel pending
12 admission. They would have to register, the have to comply
13 with the CLE, they would be subject to disciplinary action in
14 the state for violating the rules but they could not appear in
15 court. And that's not attached to my testimony but I have an
16 extra copy if I could leave that.
17 MR. MOWBRAY: Fast forward to Exhibit C, here.
18 MR. FOLEY: Okay.
19 MR. MOWBRAY: Tab 12 in your materials.
20 MR. WILSON: You're in-house for Nevada Bell and is
21 Nevada Bell in Nevada? It's a division, obviously.
22 MR. FOLEY: Right, and Nevada Bell is a corporation.
23 It's not Nevada Bell Telephone Company, it's a corporation.
24 MR. WILSON: Right.

1 MR. FOLEY: It's a wholly owned subsidiary.
2 MR. WILSON: And your activity is limited to Nevada
3 Bell and you're in-house counsel for Nevada Bell?
4 MR. FOLEY: Right. My office is located in Reno, I'm
5 responsible for the legal matters in Nevada.
6 MR. WILSON: Right. So you don't, I mean, as in-house
7 counsel you don't hold yourself out to the public as a lawyer,
8 your sole client is Nevada Bell, your employer?
9 MR. FOLEY: That's correct, yeah. The only third
10 parties I deal with are normally either adversaries, folks
11 calling, making claims -- or disputes -- and then I represent
12 the company's interests, if I can do that.
13 MR. WILSON: Right.
14 MR. FOLEY: But I would not give outside advice, no, to
15 the public.
16 MR. MOWBRAY: Mr. Foley, can I ask you to read into the
17 record your attachment C? It's not that long.
18 MR. FOLEY: Okay.
19 MR. MOWBRAY: For our record.
20 MR. FOLEY: This is the proposed interim rule -- and
21 there are two recommendations. This is the first rule about
22 pending admission, what activities are admissible for in-house
23 attorneys. An attorney -- the first section, section one:
24 An attorney licensed by another state or the District

1 of Columbia to practice law may be employed as in-house
2 counsel in the state of Nevada and shall be permitted to:
3 A) Provide legal counsel to his or her employer.
4 B) Communicate and negotiate with third parties on
5 behalf of his or her employer regarding but not limited to
6 such matters as complaints, disputes, claims, contracts and
7 settlements.
8 C) Represent his or her employer in court proceedings
9 provided that the in-house counsel attorney associate with
10 licensed Nevada counsel -- or Nevada attorney.
11 D) Represent his or her employer in administrative
12 proceedings and, if permitted by the agency, can do so without
13 the assistance of a Nevada licensed attorney.
14 E) Take those actions that a non-attorney of the
15 corporation could lawfully perform as a management employee or
16 officer of the corporation, provided the in-house attorney is
17 a management employee or officer of the corporation.
18 In section two:
19 In-house attorneys will be subject to the following
20 disciplinary proceedings, will be subject to the disciplinary
21 proceedings of the Nevada -- of Nevada for violations of the
22 rules of professional conduct and must comply with the
23 following requirements:
24 A) In-house attorney must comply with Nevada's CLE

1 requirements where licensed attorneys maintain records
2 sufficient to document compliance if requested.
3 B) In-house attorneys must be admitted and remain in
4 good standing with the highest court of another state or the
5 District of Columbia until such time that they're admitted in
6 Nevada.
7 And then C) On external correspondence and business
8 cards, in-house attorneys identify the states they are
9 licensed to practice so that it is clear that they are not
10 licensed in Nevada.
11 MR. WILSON: Would you add to that that it would be
12 good public policy if in-house counsel were required to
13 register with the state bar, that is, in-house counsel that is
14 representing a company that he or she is employed by as
15 in-house counsel, and obviously comply with CLE requirements
16 and other professional standards so that they're of record?
17 MR. FOLEY: I think that would be a good idea. On
18 occasion we have had correspondence directed to the Bar
19 Association about in-house counsel and I think it's good idea
20 for the Bar Association to know who is the in-house counsel in
21 state.
22 MR. CURTAS: How many attorneys are employed here?
23 MR. FOLEY: Here in Nevada Bell?
24 MR. CURTAS: Yeah.

1 MR. FOLEY: Presenting I'm the only attorney here. We
2 have one additional slot that we're looking to fill. We're in
3 a hiring freeze. And we'll associate -- typically the way SPC
4 does things -- I know all corporations are different --
5 they'll bring in a head attorney that has some experience with
6 the corporation or telecommunications law and then the
7 junior's position, they'll try to bring in a local attorney
8 who is familiar with the courts, familiar with the processes,
9 and then bring that attorney up through the organization. For
10 example, I started in Oklahoma doing civil litigation for the
11 telephone company.
12 MR. WILSON: Your comments are directed solely to
13 in-house counsel, that is counsel employed by Nevada Bell or
14 its parents?
15 MR. FOLEY: Right.
16 MR. WILSON: Okay. Under what circumstances do you
17 use, do you retain private counsel?
18 MR. FOLEY: Currently for all litigation we have
19 outside counsel since I can't appear in court. For all PC
20 matters we'll associate with counsel because there's some
21 issue about whether or not you can appear at the Public
22 Utility Commission. And even though it's fairly expensive and
23 in listening to the prior testimony where you have the counsel
24 who's sitting there billing you at $150 to $250 an hour while

1 they're sitting at a hearing, it's fairly pricey for a company
2 such as SPC but we'll comply with, of course, the Bar
3 Association guidelines until we clarify.
4 MR. TURNER: How would we verify that in-house counsel,
5 the in-house counsel practicing here but not licensed were
6 actually in good standing with their own bar association?
7 Would there be a method that you would suggest to do that?
8 MR. FOLEY: For example, in Missouri as I was reading
9 through, I think it's Missouri or Kansas, when you register as
10 in-house counsel you have to provide a certificate of good
11 standing.
12 MR. TURNER: And would you do that once a year to make
13 sure that you were in fact, every year, still in good
14 standing?
15 MR. FOLEY: You could do that. You also -- I'm
16 admitted in four bars so yearly I get statements from each of
17 them saying, you know, your bar dues are due. And it gives us
18 the bar number and everything and that would also show us in
19 good standing. If you go out and get a certificate, typically
20 you have to go write the clerk of the supreme court or there's
21 an attorney agency or bar agency and you have to write that
22 agency, admission agency, and they will send you a
23 certificate. But those are the, sort of the in between when
24 the attorney first gets to the state before they can be

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: 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 the 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.

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. 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.

Lastly, I think it's good for the state of Nevada that large corporations are constantly relocating. Since the time

I've been with SPC we've moved our entire legal staff from Saint Louis, where I worked for the company, down to San Antonio. I was with Cingular Wireless -- which is an affiliate of SPC -- and I was the regional general counsel for the east region. We were moving the office. We were thinking about moving to downtown D.C. and bringing all of the lawyers with us -- we had seven lawyers plus the senior staff of officers for the east region, about 20 employees.

One of the issues that we looked at as far as the legal department is how easy is it for those attorneys to get admitted into the state, do we have to worry about admission requirements. And I think a state does itself a disservice sometimes if it has a real restrictive policy on allowing in-house counsel -- because that is a fairly strong deterrent. My position sat vacant for several months because they couldn't locate an SPC attorney with some experience in telecommunications to come in and take the job. It's one thing to hire someone off the, you know, the street that could be a great attorney, but those attorneys don't know the corporate culture, they don't know who to contact.

So I think it would facilitate bringing large corporations, large legal departments into Nevada if they had a fairly receptive policy of application -- or registration by application for in-house attorneys.

MR. ADDISON: 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?

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.

MR. WILSON: Thanks very much.

MR. FOLEY: Thank you, I appreciate the opportunity.

(A short break was taken at this time.)

MR. WILSON: Why don't we go back on the record and take the next witness.

MR. HAMILTON: I guess I'm it. Good morning, my name is David Hamilton and I've been practicing in Reno for 29 years now. I'm also licensed in California. The major reason I came up here to address you is that I have some concern about how out-of-state counsel gets served. I've had difficulty with this a number of times. And for instance, you're in the middle of litigation, which I do quite a bit of, and you have some emergency gripe that comes up, you ought to be able to serve out-of-state counsel by fax.

There's a case called F & F versus Chief Construction, I believe, which says you can't serve by fax and a court can't order it. There is a conflicting Eighth Judicial District rule which says that you can. I think that if you allow out-of-state -- yes, ma'am?

MS. BECKER: The Eighth Rule was passed after the case.

MR. HAMILTON: I know, but it's still for the rest of the state, I think, you can't certify fax.

MS. BECKER: That's correct.

MR. HAMILTON: And I think that there ought to be a way

1 to serve out-of-state counsel by fax, at least in the
2 emergency situations if not always. But there ought to be
3 some kind of a modifier on it so that it can't be used as a
4 weapon to serve somebody at 9:00 o'clock Friday night and the
5 person doesn't come to their office over the weekend and all
6 of a sudden they've got five -- three to five days to answer.
7 Like over the Thanksgiving weekend you could get really hurt
8 that way. There ought to be a way to keep that from being a
9 tool of oppression.
10 The next thing I'd like to talk to you about --
11 MR. MOWBRAY: Dave, can I ask you from that point on
12 the fax. In the cases where you're concerned, don't you have
13 local counsel that you can also effect service on, local
14 counsel in addition to out-of-state counsel?
15 MR. HAMILTON: As an example, there is a gentleman by
16 the name of Doyle who is subject of the Barrett versus Baird
17 decision who practices in Sacramento, and his local counsel is
18 Kim Mandelbaum in Las Vegas. And you need an order here in
19 Reno, short in time, you want to give them advice that you're
20 going to go seek it from the judge, how do you serve Kim
21 Mandelbaum in Las Vegas for a Sacramento attorney? That's
22 just one example of why I think you need a rule on that.
23 The second thing I wanted to talk about is I do a lot
24 of attorney malpractice cases and frankly I'm getting a little

1 sick and tired of not being able to sue some attorneys because
2 it's useless, you get a piece of paper. I think that there
3 ought to be mandatory malpractice coverage for not only Nevada
4 attorneys but for the out-of-state, but for particularly the
5 out-of-state. And I think that there ought to be some way
6 that they have to prove that the policy covers their acts in
7 the state and that they consent to jurisdiction in our local
8 courts and not remove it to federal court. There ought to be
9 a waiver of their right to remove because the people, for
10 instance, who were malpracticed in Elko, they ought not to
11 have to come to Reno and get a federal court to deal with
12 their case, they ought to be able to do it in Elko County --
13 White Pine County, wherever.
14 So I think there ought to be a stipulation that they
15 consent to jurisdiction in the local state courts for
16 malpractice.
17 MR. WILSON: On the part of an insurance company?
18 MR. HAMILTON: Well, I think that if you bind the
19 attorney when he somehow registers or become a members -- or
20 becomes able to practice here, that he sign some document
21 waiving. I would think that would be binding on the insurance
22 company.
23 MR. WILSON: It would?
24 MR. TURNER: Yes.

1 MS. PISCEVICH: Well, not if it's an contractual
2 relationship.
3 MR. TURNER: It depends on how they word it, but --
4 MS. PISCEVICH: You can't bind somebody --
5 MR. TURNER: No, but generally I think you can bind --
6 MR. HAMILTON: But the insurance company is not a party
7 to a malpractice action, so --
8 MR. TURNER: They're just obligated under contract to
9 pay whatever damage is incurred, and I don't think they can
10 limit where you could bring the lawsuit.
11 MR. HAMILTON: I don't think so either, but if that
12 were the insurance commissioner could pass a rule to take care
13 of that problem. So I think that you ought to look at the
14 malpractice not only for out-of-state people but for in-state
15 people, and I think that ought to apply for in-house counsel,
16 even though they seldom get involved, because they can, they
17 can affect someone who has a right to sue, because they're the
18 other side, because of some act they do and there should be
19 coverage for those people. Because their clients, non-clients
20 can sue an attorney for acts related to malpractice and there
21 ought to be coverage for those.
22 And the other point I would like to make is that I
23 think that there ought to be a registration process where you
24 can just register to practice in the state of Nevada. There

1 ought to be a short delay while the state bar gets a chance to
2 check up on your home jurisdiction. I think one of the things
3 that we ought to do is require the state bar to put up the
4 names of the admitted attorneys who are eligible to practice,
5 like California does, where you can just go to the name of the
6 person, find their name, address, phone number, fax number and
7 whether they've been disciplined in California.
8 I think we ought to have that up on the Internet so
9 that when Nevada lawyers go to other states that there is an
10 easy way to check up, because this ought to be fair both ways.
11 We've got to look at how we're treated in other states. I've
12 practiced in Tennessee and Connecticut and I didn't have any
13 trouble and I was treated cordially and fairly by the judges
14 in those states.
15 Is there any questions?
16 MR. MOWBRAY: On your registration process, would it be
17 for specific, limited circumstances or are you advocating just
18 a general registration process?
19 MR. HAMILTON: I believe a general registration would
20 be fine. I don't think it ought to be just for a specific
21 case. The marketplace will -- by the prices charged by the
22 out-of-state attorneys -- will control how much they come
23 here. Although we'd like to keep it a closed shop here, I
24 think that Nevada attorneys, by keeping their fees down, will

1 close the market off to a great degree to out-of-state
2 attorneys.
3 MR. CURTAS: Doesn't that basically abrogate the entire
4 qualification to practice law in Nevada? Basically we're just
5 opening the doors and saying anybody in any state can practice
6 law. As long as you're licensed somewhere else you can come
7 here in an unlimited capacity and practice law here --
8 MR. HAMILTON: Yes.
9 MR. CURTAS: -- just by signing a register somewhere.
10 Is that what you're advocating?
11 MR. HAMILTON: No, I'm not advocating that you come
12 here, move here, use a license from another state, but I think
13 that you ought to be able to practice any time you get a
14 client here.
15 MR. TURNER: Would you require the person registering
16 to pay a registration fee, and if so, what would you suggest
17 that be?
18 MR. HAMILTON: Same as the bar does. I mean, they
19 ought to be treated just like we're treated.
20 MR. HARDESTY: Well, you're talking, David, about a
21 registration process that requires the parties to submit to
22 the jurisdiction, the state bar and all the disciplinary
23 requirements and the like.
24 MR. HAMILTON: I'm sorry, I don't remember the name of

1 the case but there is a case that says if you come in here and
2 do an act in Nevada you're subject to discipline by the state
3 bar. And I'm sorry, I don't remember the name.
4 MR. MOWBRAY: Bar versus Waters?
5 MR. HAMILTON: Yes. So I think that that's already
6 covered. I don't, I don't know if the disciplinary process
7 needs to be fine-tuned. I sat for nine years on the
8 disciplinary committee and I think that I would have one
9 caveat to an out-of-state attorney who is being charged with
10 disciplinary violation, that he has to have a local attorney,
11 in that process, to deal with him. But I guess that comes
12 back from my bias of seeing too many attorneys representing
13 themselves in front of the grievance committee and not doing
14 too well and making the panel's decision harder to make.
15 MR. MOWBRAY: Let me give you a hypothetical just to
16 kind of test your theory, here. If you had an out-of-state
17 lawyers, say licensed in Indiana in good standing, under your
18 model he or she should be able to come to Nevada, register --
19 let's say representing a Nevada citizen. And under your
20 scenario if there was a problem, a disciplinary problem, would
21 Nevada then be the forum to adjudicate the disciplinary
22 hearing? And under your scheme, would you expect that Indiana
23 then would give full faith and credit to the Nevada decision?
24 MR. HAMILTON: Yes.

1 MR. MOWBRAY: Okay.
2 MR. HAMILTON: And I think there's got to be -- I don't
3 know how, I don't know how you would write the rule, but I
4 kind of would like to have the judge -- if it's a litigation
5 case -- have the ability to say: You're suspended because of
6 the conduct in this case. I mean, if it's just somehow so
7 abhorrent -- a number of cases in Carson City. I can't
8 remember the attorney's name, he passed away now, but I just
9 wish the judge had said: You can't do it anymore because
10 you're just so incompetent you're hurting your clients. But
11 that leads to the temptation sometimes for the judge to
12 disqualify somebody just because they would like -- be more
13 comfortable with a local person. But I still think that there
14 ought to be a right to register and practice.
15 MR. TURNER: There would be a problem with the rules of
16 evidence and procedure in Nevada courts that outside counsel
17 would not be familiar with and that would create a problem
18 judicially.
19 MR. HAMILTON: I practice with a number of, been local
20 counsel for a number of attorneys but I guess I've been real
21 lucky, some of them have been real good. Tom Sheridan. I
22 don't know if any of you know Mr. Sheridan. He was the United
23 States attorney for the southern district of California.
24 prosecuted Hoffa and got him. He didn't have any trouble.

1 MR. TURNER: The federal practice I would assume that
2 to be the case, but in the state practice it might be a
3 different matter.
4 MR. HAMILTON: Well, he was doing the Louie St. Pierre
5 murder case here in local court in front of Judge Barrett
6 years ago, he didn't have any trouble with any of the rules,
7 and they were much different then than they are now.
8 MR. TURNER: Generally the federal court will require a
9 greater knowledge of rules of evidence. The procedures are
10 stricter so that you can get a, to some extent, a higher
11 trained attorney. So of course to open the doors to every
12 attorney from any other state by registration, they adhere to
13 our local rules and our local way to practice, you don't think
14 that would create a problem?
15 MR. HAMILTON: I think that there would be problems, I
16 can't argue with you there at all. But our rules, we've tried
17 to make then generalized by adopting the Federal Rules of
18 Civil Procedure, we've got federal rules of evidence, I don't
19 think they're that difficult. I've seen a number of
20 California attorneys come up here and do very well. Some of
21 them don't do well. But I don't know, I think that the United
22 States supreme court cases that I've read leave me to believe
23 that we should be free practice anyplace, at least on a
24 temporary basis.

1 And, you know, any other business almost, except maybe
2 doctors, lawyers, engineers, and even some of those states the
3 engineers can go practice in other states with just a Nevada
4 license. Why should we be any different as lawyers? Why
5 should we have a closed shop?
6 MR. WILSON: David, thank you.
7 MR. HAMILTON: Thank you.
8 MR. WILSON: Good morning.
9 MR. CROWLEY: Good morning, my name is Martin Crowley.
10 My name showed up on here because when the bar sent the notice
11 out they said fax in this thing if you want to come to the
12 meeting, not necessarily if you wanted to speak. And I
13 thought: Well, I better do that if I want a seat. And I came
14 here this morning and I realized that that wasn't a necessary
15 requirement. I didn't have to elbow my way through. But as I
16 listened to the testimony I thought maybe I would comment on a
17 couple of things.
18 Mr. Foley's comments, I think, are very important. I
19 don't think that we should be restricting in-house counsel for
20 corporations like Nevada Bell or other corporations that
21 choose to locate their businesses here. I do a lot of
22 business work with corporations that are just starting out.
23 They're just -- they want to come to Nevada and make it their
24 headquarters and as most of you know this is one of the prime

1 states to incorporate your business, that and Delaware. And
2 we're doing everything we can to promote that. Well, if we do
3 something like restrict their counsel then we're cutting off
4 part of that line of work.
5 MR. WILSON: Like in-house counsel?
6 MR. CROWLEY: Like in-house counsel. I don't think he
7 should be restricted. He's obviously well qualified. He
8 knows his business. Why should he be prohibited from
9 appearing before the Public Utilities Commission or something
10 of that nature? It's like -- it's not likely he's going to
11 find a local counsel to associate with that knows his business
12 better than he does.
13 So in those specialized areas like they were talking
14 earlier with the water law, things of that nature, you've got
15 these professors and people from, you know, Colorado and
16 places like that, you're not going to find somebody probably
17 more qualified than those attorneys, and to require them to
18 associate, necessarily, I don't think is -- you've done
19 anybody any favors.
20 I've practiced in Nevada for 14 years now, mostly trial
21 practice, and I've appeared in almost every court in this
22 state. I've appeared many times over in Yerington. I've been
23 in Carlin in the justice court and if you've never been in
24 Montello, that's an experience for you, you know. And so all

1 of these little courts, you've got a different flavor
2 everywhere you go: Austin, Eureka, Ely, Lovelock. You know,
3 you go to Lovelock and you go to a converted church. That's
4 the courthouse. So you have a different flavor everywhere you
5 go.
6 And I've practiced in front of judges in Saint Louis
7 and in Utah and in Washington, and in the Saint Louis
8 experience I went through the formal process that they have
9 there but it's not quite as strict as ours, just associated
10 with local counsel. He showed up the day of the hearing,
11 introduced me to the judge and he says: I've got another
12 hearing in department such-and-such, Judge. If you need to
13 get ahold of me but he appears to be qualified and he knows
14 the case and so he's here and good luck, you know, type of
15 thing.
16 And for that particular case it was important to be
17 able to do that. I don't even think it was that necessary to
18 employee the local counsel, though, because it cost my client
19 a lot more money than it would have because it cost him
20 already a bunch of money for my travel there and things of
21 that nature. It was a case that had been removed, of course,
22 from Nevada. I was intimately familiar with the facts of the
23 case. Everything that took place took place here but we got
24 jurisdictioned over into Missouri on contract and so there we

1 were.
2 And in the case of Utah the judge admitted me pro hac
3 vice right there on the spot to represent my client. And I
4 thought that was appropriate, I wasn't there to practice law.
5 I had a client that lived there and had a problem that needed
6 to be resolved and I was familiar with the facts of the case
7 so that was more important to her than to try and employ a
8 local lawyer, pay them a bunch of money to get up to speed and
9 to deal with a short, 45-minute or one-hour hearing.
10 So I think there are, there are causes that should be
11 allowed -- where people should be allowed to practice in
12 various jurisdictions but we're only going to get as far as we
13 get. We need to show that we're as open here as other places
14 are willing to be. But at the same time, David's right.
15 We've got to have some sort of protection, too, for the
16 citizens of this state. If somebody's coming in and
17 practicing, practicing law, there's got to be some sort of
18 protection to them.
19 MR. WILSON: Has your experience been in representing
20 Nevada clients whose matter has to be tried in a foreign
21 jurisdiction, Utah or Missouri or --
22 MR. CROWLEY: Yeah, and that was the case. In the Utah
23 one the person had relocated and that type of thing, and I'm
24 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 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

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 ton
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 associated with outside counsel from Seattle. He
8 came here and he 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

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, 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. CURTAS: 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. CURTAS: 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

1 things.
2 Now, when you get to practice, though, if you're
3 talking about practicing, I wouldn't open the door as widely
4 as: Register here and I can come in every -- all the time. I
5 don't think that that's appropriate. I would favor something
6 similar to what they have, a certain number of cases over a
7 period of time. Because if you're going to come here and
8 practice law then get a license, that type of thing. But I
9 don't think you should shut somebody off.
10 And I was talking to John Schiegelmilch on the break
11 and I said that I have clients that I've had for many years,
12 ten, twelve, thirteen years you've had that same client, they
13 frankly, they don't want anybody else. You've got a
14 relationship with that person -- some of us it's a closer
15 relationship than with our spouse -- and they don't want to --
16 somebody took that the wrong way.
17 MS. BECKER: Would you like that stricken from the
18 public record?
19 MR. CROWLEY: Yes.
20 MR. WILSON: I don't know if that speaks to the
21 attorney/client relationship or the spousal.
22 MR. CROWLEY: Yeah, there you go. It could be the
23 spousal relationship. You spend 14 hours a day at your office
24 for too many years and sometimes your spouse and kids don't

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 someplace, 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 that's that hard to take it that way.

1 MR. MOWBRAY: Martin, can I ask you a couple of
2 questions? Are you advocating a national driver's license
3 approach to licensure; i.e., that if you're admitted in one
4 state you're admitted in all?
5 MR. CROWLEY: I think that would be more fair. Under
6 the constitution under the country that we live in, I think
7 that would be appropriate to allow freedom of choice. You
8 know, if my Florida client wants me to represent him in his
9 Florida trial, he's being tried for his life or his liberty or
10 his property, that should be his choice rather than have to
11 retain the other attorney, but with the restrictions that I'm
12 not spending all of my time there without, you know, doing a
13 little bit more to become part of the local, the bar
14 association.
15 I think you should, you should take the bar and, you
16 know, if you're going to live somewhere and practice there and
17 that's going to be your business, but after a number of years
18 of practicing, you know, there's some states that have a
19 very -- fairly liberal reciprocity. That also depends on
20 where you come from, too. If you want to go to Colorado and
21 get, get your license there after a certain number of years,
22 or New York, things of that nature, well that's a quid pro quo
23 type of, type of thing.
24 And in some of those jurisdiction they may look at you

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, then 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 those background checks, I think that would be totally
2 unnecessary and a waste of time and money.
3 MR. WILSON: Questions?
4 MR. CROWLEY: Thank you.
5 MR. WILSON: Thank you. Your timing is impeccable.
6 MR. REIS: I apologize if it's not.
7 MR. WILSON: You're right on time, you don't need to
8 apologize.
9 MR. REIS: Good. Here's some written testimony that I
10 believe everyone has a copy of and I think we have enough
11 copies.
12 MR. WILSON: State your name, sir.
13 MR. REIS: Okay, it's Robert Reis. I'm the vice
14 president for insurance operations of ALPS, Attorneys
15 Liability Protection Society. ALPS has, for 13 years now,
16 been the bar sponsored profession liability insurer for
17 lawyers in Nevada, as it is the bar sponsored professional
18 liability insurer for lawyers in ten other states and does
19 business in a total of 24 states in the jurisdiction.
20 I won't read through the testimony that I hope you have
21 a copy of and you'll have a chance to read other than to
22 highlight a few of things that we've said there and to invite
23 any questions that you may have. Let me also say we
24 appreciate the opportunity to be here. We bring a different

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 multijurisdictional 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

1 outside the jurisdiction. And as you see in the materials
2 it's over 13 percent in Nevada. Those 13 percent of claims
3 have accounted for more than 20 percent of the dollars spent.
4 So they have, on average, been more severe than other claims.
5 Compared to our other two large jurisdictions where our
6 penetration of lawyers in terms of the marketplace -- that is
7 the same percentage, roughly, of all of the lawyers in private
8 practice are insured as are in Nevada -- the percentage is
9 amazingly high. And I was very surprised at that. It's 3.7.
10 I think that the material suggests that Montana is 1.3, and
11 South Carolina. Those states do not have the same draw from
12 folks coming out of town as you do, obviously, but nonetheless
13 they border areas where folks tend to practice across state
14 lines.
15 MS. BECKER: Mr. Reis, let me see if I understand you
16 correctly. Those are claims against Nevada lawyers from
17 people out of the state of Nevada, correct?
18 MR. REIS: Correct. And they were either litigated
19 outside the state of Nevada or they are non-Nevada residents
20 who came here and they're litigating here. When we -- more
21 specifically to the Nevada claims I thought initially: Well,
22 this must be slips and falls in casinos. This has to be
23 personal injury claims from other jurisdictions from people
24 who flew in, fell, engaged a Nevada attorney, went back to

1 their jurisdiction, later had a malpractice claim.
2 In point of fact, only two of all of the cases we had
3 involved that particular scenario. Most of them are
4 transactional representation, which has to do with people who
5 want to do business across state lines and find it attractive
6 to do so in Nevada for a host of reasons and it involves a
7 host of different types of business relationships. That's
8 pretty much the claims data from what we can specifically
9 glean from multijurisdictional practice.
10 The other thing that I would highlight for you, and
11 this is incidental but I've listed in the materials a number
12 of things that have come to us in an underwriting fashion.
13 And this, perhaps, is more of an indication of currency. That
14 is, what is the current interest in multijurisdictional
15 practice and what are folks doing about it, vis-a-vis
16 attempting to practice or at least being insured for their
17 practice in Nevada. The incidents that I've listed in the
18 material all happened within the last six weeks.
19 It's not a catalog of what's happened in the last year,
20 it's our most recent memory of those applications which came
21 to us and which we declined. That is, we did not issue
22 policies for these individuals who sought coverage for a
23 variety of reasons, not the least of which was we didn't know
24 what the playing field was. They wanted to bring us an

1 exposure -- because they wanted to practice across state
2 lines -- that we could not qualify or quantify, and therefore
3 we could not set a rate for because we could not understand
4 what their practice dynamics would be.
5 In that particular scenario we really only have two
6 choices, we can pick the highest rate for any of the states in
7 which that group would practice or we can do what the medical
8 malpractice insurers did years ago and say we will charge you
9 a premium for each license you hold. So you'll pay four times
10 your malpractice premium if you hold licensure in four states,
11 or something like that, which is very onerous. It's not done
12 now but it is a concept that has been done and some insurers
13 may return to. I hope not. It is difficult to quantify and
14 qualify and therefore price and administer an insurance
15 program when folks do practice across state lines and there
16 are not uniform standards that we would expect them to adhere
17 to when they do practice.
18 The other thing I would highlight is attached to the
19 material on the fourth page -- I guess it's the fifth page --
20 is our list of rates in terms of what we call the state
21 relatively. When we look at the practice of law in the
22 various jurisdictions in which we write insurance, one of the
23 most important factors and the factor that changes the premium
24 more than anything else because it is a factor applied at the

1 end of the rating calculation, is this jurisdiction in which a
2 lawyer practices.
3 This is an objective number, more objective than our
4 other numbers, because what it is a result of is our claims
5 experience in those various jurisdictions. If you practice in
6 Alaska, for instance, the risk of a loss and the amount of
7 that loss will be much higher than if you practice in the
8 Dakotas. And you can see that there are two numbers listed
9 there for Nevada. Last year our claims statistics were such
10 that we divided out Clark County because it is not fair to the
11 other Nevada attorneys to have the loss experience in Clark
12 County calculated with them. When our actuaries divided all
13 that by zip code, this is objectively what we came to in terms
14 of the differentiation of the rates. We are working on that
15 for everyone involved and are hoping to bring it down, but as
16 to the year 2000 claims, that's where we came.
17 MR. WILSON: Do you know why it's higher?
18 MR. REIS: Why it's higher? We can only speculate.
19 One of the concerns is most of the multijuristictional factors
20 that we can begin to isolate happen in Clark County. The
21 overtures that I pointed to in the, in the underwritings
22 section, there, sir, are all Clark County. It may be a
23 function of numbers and I think there's a function of
24 transient population, folks moving in and out. There are a

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?
9 MR. REIS: Right, exactly. Improper termination,
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.

1 MR. CURTAS: I know you can't -- again, I'm just asking
2 based upon what Mr. Wilson just said. In those transactions,
3 can you recall that a lot of them, the claims based on those
4 transactions, were because of Nevada corporations -- which
5 Nevada is becoming a very, very attractive place for people to
6 incorporate -- that businesses are now looking all over the
7 United States and the people who own and run those businesses
8 are all over the United States -- Texas, Indiana, Maine, you
9 name it, Oregon -- but incorporate here. Did you see any
10 substantial amount of claims based upon those kinds of
11 corporate, that type of corporate relationship with a Nevada
12 corporate counsel and a business that really has no
13 relationship to Nevada but for the fact that it filed its
14 article with the Secretary of State?
15 MR. REIS: I would not say we saw it where the business
16 had no relationship to Nevada, but the relationship sometimes
17 was very thin. There was one such situation that involved a
18 family business in the state that came from Wisconsin, another
19 situation with a manufacturer from New Jersey. That certainly
20 happens.
21 MR. CURTAS: When you said "transactional," I guess you
22 meant transaction across the board?
23 MR. REIS: As opposed to litigation.
24 MR. CURTAS: Any kind of business transaction?

1 MR. REIS: Bankruptcy, incorporating a business, estate
2 planning to some extent, financial arrangements, leases,
3 contracts, numbers of things. Those areas, by the way,
4 obviously that folks don't think about pro hac vice because
5 they're not going to be in front of a judge so they don't
6 consider it.
7 MR. HARDESTY: Basically a deregulated area. Mr.
8 Chairman? One of the questions that has developed in these
9 hearings is concern that lawyers from outside the jurisdiction
10 come here, practice here, perhaps commit malpractice to the
11 citizens in this state. Do policies in other jurisdictions
12 have exclusions that prevent coverage for practice in Nevada
13 if you're not licensed here?
14 MR. REIS: The policies themselves do not. We make it
15 a habit of not insuring anyone when they give us an
16 application unless they are licensed in the particular
17 jurisdiction in which they send us an application from. In
18 the state of Nevada we would not insure anyone who was not a
19 member of the Nevada State Bar.
20 MR. HARDESTY: What about other companies, do you know?
21 Do they insure a lawyer in Florida who -- is that insurance
22 going to be good here in this jurisdiction if a citizen here
23 sues?
24 MR. REIS: There are certainly insurers out there who

1 will do that in a heart beat. Most of us who are responsible
2 and do offer most of the coverage in Nevada would not, but I
3 do know of some who would.
4 MS. BECKER: So a lawyer from out of state who had
5 coverage based upon their licensure in that state would be
6 covered for all claims regardless of where those claims were
7 coming from and where the malpractice is alleged to have been
8 territorially committed?
9 MR. REIS: Anywhere in the world so long as the suit is
10 brought in the United States, its possessions or Canada.
11 MR. WILSON: So you cover the pro hac vice
12 relationship?
13 MR. REIS: Oh, yes.
14 MR. WILSON: How about the local counsel who -- the
15 Nevada counsel who brings an out-of-state counsel or
16 out-of-state counsel selects Nevada local counsel on a pro hac
17 vice basis, you insure both I gather?
18 MR. REIS: Well, not necessarily. If we insured both
19 firms certainly we would. If the pro hac vice attorney was
20 brought in from another jurisdiction and other insurer insures
21 that firm -- because insurance follows firms -- then they
22 would defend that claim.
23 MR. WILSON: But you would insure a Nevada counsel who
24 admits an out-of-state lawyer pro hac?

1 MR. REIS: Right.
2 MR. WILSON: What do you require of the Nevada counsel
3 who admits out-of-state counsel?
4 MR. REIS: Generally there's no requirement because
5 generally we would not know of it. In certain circumstances
6 it would be brought to our attention at renewal but that is
7 rare.
8 MR. WILSON: But in the Nevada lawyer were sued for the
9 out-of-state lawyer's negligence or misconduct or act, and the
10 Nevada lawyer, as being Nevada lawyer, is primarily
11 responsible for damage done to the client, what position does
12 your company take with respect to insuring the Nevada lawyer
13 who, whose insurance is on the line for the out-of-state
14 lawyer that's admitted pro hac?
15 MR. REIS: No problem whatsoever. There's no
16 exclusion. We would immediately defend that lawyer.
17 MS. BECKER: How does it affect which one's primarily
18 liable?
19 MR. REIS: Well, under joint and severable liability it
20 can go anywhere and do anything. We've had situations where
21 litigation has bounced around to a number of jurisdictions
22 depending upon procedure, law and given areas. It does impact
23 the losses.
24 MR. HARDESTY: On your application that you have you

1 actually require a practice breakdown?
2 MR. REIS: We do.
3 MR. HARDESTY: Does that include an inquiry about
4 whether you act as local counsel in matters?
5 MR. REIS: No it doesn't but next month it will. I'm
6 in the process of fixing other things in our application and
7 that's a good one to fix.
8 MS. BECKER: The primary issue is that when you have
9 someone that's doing a lot of multijurisdictional practice,
10 you're either not going to cover them because you can't
11 determine a risk or if you decide to cover them how you
12 calculate the rate is going to probably be higher because of
13 the licensing and the multijurisdictional practice issues?
14 MR. REIS: That's absolutely correct. Let me give you
15 an example. One of your bordering states for years has had a
16 reputation of having one lawyer per six or seven sued every
17 year. I won't mention that -- in Nevada, currently, one out
18 of 25 is sued annually. You can understand just on numbers
19 alone if the average malpractice case costs us between $22,000
20 and $28,000 -- and that includes the sixty percent upon which
21 no payment is made, upon which defense fees are usually
22 limited -- then you can understand that with those kind of
23 dynamics it would be very difficult to bring those two
24 practices together. Not impossible. Given some standards I

1 think very possible. A little more homework, certainly,
2 but --
3 MS. BECKER: Is that one in four for all of the lawyers
4 in Nevada or one in four for lawyers who insure?
5 MR. REIS: Four percent. One out of the 25 of the ones
6 that we insure. We can't bring the statistics statewide --
7 MS. BECKER: Right, I just wanted to clarify.
8 MR. REIS: Because no insurer would ever share those
9 things.
10 MR. MOWBRAY: Mr. Reis, would you agree or disagree
11 with the statement in Nevada that if you practice in any zip
12 code other than 891XX -- which we'll say by definition is
13 Clark County -- you can expect, all other things being equal,
14 to have a 20 percent reduction in a premium over the national
15 average, where in Clark County you would expect to have a
16 surcharge of 20 percent more, for a differential of
17 approximately 40 percent, and that that difference is probably
18 due to multijurisdictional practice aspects?
19 MR. WILSON: That's a compound question.
20 MR. REIS: Most of the logic there --
21 MS. BECKER: Sustained.
22 MR. REIS: Mr. Chair, is it your direction that I
23 should try to elaborate to that?
24 MR. WILSON: You can answer it in two parts.

1 MR. REIS: I'll answer it in several I think, if you
2 wouldn't mind. Generally, yes. I don't know that we have
3 enough data to say at the end that it's primarily due to
4 multijurisdictional practice. It could be primarily due to a
5 number of things. I think multijurisdictional practice plays
6 heavily in that. When we say all other things being equal, in
7 our universe of 11,000 lawyers, there are two that have the
8 same premium. That's how complex the rating structure is.
9 So areas of practice make a difference, CLE credit
10 makes a difference, years in practice make a difference, prior
11 claims, prior incidents, disciplinary complaints make a
12 difference, and that's just the beginning of a long list.
13 So -- but generally, yes, there will be a significant
14 surcharge above the national average, which is 1.00 in our
15 system in Clark County, and a credit, a discount credit in
16 other areas of the state.
17 MR. TURNER: Let me just ask this question: This 1.20,
18 which adds surcharge, that reflects the malpractice of lawyers
19 who are licensed to practice in Nevada?
20 MR. REIS: Oh, yes.
21 MR. TURNER: So it really does not give us
22 statistically what lawyers are doing coming from out of the
23 state?
24 MR. REIS: No.

1 MR. TURNER: So we're talking about our own lawyers
2 raising the rates?
3 MR. REIS: Right, of which part of that obviously has
4 to do with the out-of-state multijurisdictional factors. But
5 yes, it's Nevada insured attorneys.
6 MS. BECKER: Would there be any benefit -- we discussed
7 at times if we were going to develop some sort of registration
8 process for limited practice of out-of-state people who are
9 connected to the pro hac vice rule, that we require them to
10 supply malpractice insurance, the policy, et cetera. How is
11 that presumably going to affect their ability to get policies
12 in those other states or things of that nature and do you
13 think it would have any impact?
14 MR. REIS: It would not be difficult for them to supply
15 you with a copy of their current declarations page or a
16 certificate of insurance. All insurers do that as a matter of
17 course and we do it regularly. I think you raise the larger
18 issue and topic for another day, and that is how to protect
19 the clientele, the populous of Nevada, vis-a-vis insurance.
20 We're the only English speaking nation that does not require
21 its lawyers to carry malpractice insurance.
22 MS. BECKER: So you don't think that it would affect
23 the ability of those lawyers to get insurance in other
24 jurisdictions --

1 MR. REIS: Absolutely not.
2 MS. BECKER: -- or the industry to suddenly start
3 saying no, we're not going to license anymore because --
4 MR. REIS: If I were an underwriter in most of the
5 jurisdictions that are sending you lawyers, I would rather
6 those lawyers practice here than in their own jurisdiction.
7 MS. BECKER: You would rather have them practice --
8 MR. REIS: I would rather have them here than the
9 jurisdictions we see them coming from.
10 MR. WILSON: Why?
11 MR. REIS: Risk factors are less in a number of
12 different ways, especially if they want to practice in
13 Winnemucca or Elko. Las Vegas, I don't know to be honest.
14 The risk factors there are increasing.
15 MS. BECKER: Well, these are not individuals who are
16 going to be licensed to practice in Nevada, they might be
17 registered to do a certain amount of work or certain types of
18 work.
19 MR. REIS: Right.
20 MS. BECKER: Okay.
21 MR. REIS: If you register them we are going to assume
22 that you will control them, police them, and that they will
23 fit into the culture of practicing law in Nevada.
24 MS. BECKER: And that might actually create a better

1 benefit down the line in terms of the rates and insurance?
2 MR. REIS: Our business is based on predictability
3 across the whole pool of insured lawyers. If you set the
4 standards, standards that we know, predictability rises to the
5 point where we can be comfortable insuring that group who are
6 doing what they're doing or certainly there are other insurers
7 that would too.
8 MR. WILSON: So you're saying if we register them --
9 and I'm not sure what you mean by standards -- but if we
10 register them you suggest some level of accountability, it's
11 easier for you to insure them and if they're registered and
12 insured it creates a higher degree of protection for the
13 public who's hiring the lawyer or who is affected by that
14 lawyer's practice?
15 MR. REIS: Absolutely.
16 MR. WILSON: That creates a higher level of protection
17 for the Nevada client who is represented by or has engaged an
18 out-of-state lawyer --
19 MR. REIS: Right.
20 MR. WILSON: -- if there's registration coupled with
21 the requirement of insurance for the protection of the client?
22 MR. REIS: The other thing, frankly --
23 MR. WILSON: And should we require as a condition of
24 registration, that that out-of-state lawyer's insurance cover

1 and provide coverage for his activity in Nevada?
2 MR. REIS: I certainly think you can. I think, as I
3 eluded to a minute ago, you run up against the question of
4 what do you do for Nevada attorneys, vis-a-vis insurance, and
5 that's not something that I think you want to get into today.
6 MR. WILSON: Well, I don't know. Should we, shouldn't
7 we and why?
8 MR. REIS: Our corporate position is we think you
9 should consider it. South Dakota and Alaska and now I believe
10 Ohio have instituted rules that require disclosure to clients.
11 Oregon requires that every attorney practicing in Oregon is a
12 resident, being a member of the professional liability fund
13 and therefore is insured at least for minimal limits. As I
14 said a minute ago, every other English speaking nation
15 requires it as a matter of course. You don't practice law in
16 Scotland, for instance, unless you pay the fee and you are
17 insured by it --
18 MR. WILSON: Why don't we?
19 MR. REIS: I think it's basically an issue of the
20 freedoms of those in practice. The M word comes up --
21 mandatory -- and no one likes to hear that. How Oregon did
22 this 15 years ago is still a mystery to the rest of us. They
23 actually do the legislative. If you want to protect clients,
24 ultimately, and if you want to create a pool of money so that

1 mistakes can be rectified, I think you need some type of
2 pooling arrangement. Ultimately that's insurance. It could
3 be what we might term self-insurance funded with some other
4 mechanism for large losses, it could be a host of different
5 things. Insurers will not immediately embrace it because it
6 comes up against what we all fear greatly, and that's adverse
7 selection.
8 MR. WILSON: What is that?
9 MR. REIS: Well, that means that if your insurance
10 system like that has to be -- in a system like that there has
11 to be a residual market so that everyone can have insurance.
12 There has to be. I mean, no one wants to make the decision as
13 to whether or not that anyone practices to an insurer, nor
14 should they. So everyone will have to take their fair share
15 of the residual market. That will tend to, initially, drive
16 prices up but if you follow the experience of professional
17 liability fund in Oregon, which is a great one, over time it
18 is driven their assessments down because of the proactive work
19 with the lawyers of the bar.
20 MR. WILSON: So they have a mandatory system?
21 MR. REIS: They do.
22 MR. WILSON: Is that mandated by the bar or the supreme
23 court?
24 MR. REIS: It was legislatively enacted.

1 MR. WILSON: I see, the legislature got involved. Very
2 interesting.
3 MR. REIS: The court complemented it with certain rules
4 to allow those to function, to do a great deal of work without
5 the necessary reporting constrictions, if you will, for ethics
6 violations of other lawyers, which in the end I think helped
7 their entire system.
8 MR. WILSON: You recommend the Oregon model?
9 MR. REIS: With some modifications that one would have
10 to look at in today's world, particularly I think in Nevada.
11 But it's something to look at. It does work.
12 MS. SCHIEGELMILCH: One of my concerns is that if it
13 was just a registration type of provision without really much
14 requirement, come in, sign a piece of paper, say you're
15 subjecting yourself to Nevada jurisdiction, Nevada courts, and
16 then they're getting insured here in Nevada -- they're opening
17 an office, getting insured here in Nevada -- you mentioned an
18 adjacent state where there's one out of six attorneys getting
19 sued. Wouldn't that almost by default say: Well, come on in,
20 we're not going to do anything further? You're going to be
21 subject to Nevada's discipline but we're not going to test
22 your competency, we're not going to test your ability, we're
23 not going make those factors that make Nevada one in 25 versus
24 one in six, and all of a sudden our rating goes from one in 25

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: Presumedly 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

1 out-of-state lawyers practicing here in Nevada through a
2 storefront?
3 MR. REIS: In the policies that we write, we haven't
4 had any instance, and there's been very, very few where
5 there's a principal Nevada office, which are the lawyers we
6 would insure and they have an office somewhere else, St.
7 George, and came here and practiced and had a malpractice
8 claim. I can't, sitting here, think of one in the whole
9 claims inventory.
10 MR. WILSON: How about the other way around, where the
11 practice is in Nevada and the Nevada lawyer is the front for
12 the out-of-state lawyer?
13 MR. REIS: That situation has come up a few times.
14 It's more often come up that we insure the Nevada lawyer who's
15 the co-counsel. It adds to exposure, it adds to surcharges
16 from claims. There's a premium reflection in that we don't
17 have, in the application process, a way to isolate that yet.
18 We may soon. But we -- it does, it does flow through the
19 system.
20 MR. TURNER: Do you have any concern about mediators or
21 arbitrators coming from different states before mediations or
22 arbitrations in the state without being licensed here, if
23 they're lawyers, and does that impact on the insurability?
24 MR. REIS: We have some concern about it but it doesn't

1 show up in claim statistics so I cannot talk about it in terms
2 of insurability. In fact, in our whole inventory I think we
3 found one claim that arose against an arbitrator or mediator.
4 MR. TURNER: Should that be treated differently?
5 MR. REIS: I don't believe it should be treated
6 differently because I think you're going to see the dynamic
7 change, and I think it's going to change for two factors.
8 One, the arbitrator or mediator is not always, we find, clear
9 on who his or her client is, or are, and how we differentiate
10 that, the communication patterns will be at the beginning of
11 the relationship.
12 And secondly, the extent in our own experience with
13 claims and in our experience with many of our client
14 attorneys, mediators tend to be overzealous with hammering of
15 folks, and I am waiting for the day when a client is going to
16 turn around and claim duress because they settled at a
17 mediation, by force of a personality or what have you, without
18 clearly understanding everything they signed away in the
19 memorandum of agreements at the end of an arbitration
20 mediation.
21 Whether or not that plays through in terms of crossing
22 state lines and a multijurisdictional practice, it's very
23 early to tell and I would rather doubt it because I don't know
24 that anyone, any state or jurisdiction who's created or

1 enforced any additional or separate rules, the mediators and
2 arbitrators. But you can see it on the horizon way, way out.
3 MS. BECKER: Are you talking, actually talking about
4 people being the arbitrator or mediator or participating in
5 the mediation?
6 MR. TURNER: No, I was actually talking about
7 arbitrators and mediators coming in who are lawyers from other
8 states. I just wanted to know whether or not that had an
9 impact on the insurability.
10 MR. REIS: It's also popular for the more well known
11 mediators to invite you to their establishment, one of which I
12 know is in Hawaii, so then where does the malpractice occur?
13 MR. WILSON: Back to the storefront operation -- I use
14 that just to simplify where you have out-of-state lawyers
15 doing the work and practicing through a nominal lawyer in
16 Nevada or Clark County. Without quantifying it, is it safe to
17 say that the degree of risk to the client in Nevada, where the
18 work is done totally out of state, is higher?
19 MR. REIS: I think it is in those relationships and it
20 really falls for a couple of things that we've noticed. The
21 first is: How do the firms divide the work? Do they have
22 some memorandum between them that says you're doing this and
23 we're doing that? The second thing that often happens is if
24 one firm is working on pleadings, for instance, the other may

1 not calendar all of the due dates for the various pleadings,
2 lists, discovery, whatever that has to be accomplished, so
3 that if one misses a date the other will be involved in the
4 malpractice claim, invariably.
5 I also think there are tremendous challenges for
6 communication with clients. Usually the local counsel or the
7 counsel where the client is situated is responsible for
8 communicating with clients but if that attorney is not doing
9 all of the work then you have an internal breakdown, if you
10 will, in the joint venture.
11 MR. WILSON: So that also increases the risk to the
12 client?
13 MR. REIS: I believe it does, significantly.
14 MR. WILSON: Do those factors also increase the risk of
15 malpractice for the local Nevada lawyer?
16 MR. REIS: Absolutely. Invariably if one attorney is
17 sued all will be. And it's almost malpractice for the claims
18 attorney or a malpractice case not to involve all counsel,
19 especially those working for -- or at least all counsel
20 working for the parties at a loss.
21 MR. WILSON: The level of risk statistically increases
22 for the Nevada lawyer who's merely the middleman, so to speak,
23 and the risk to the client in Nevada is also increased --
24 MR. REIS: Absolutely.

1 MR. WILSON: -- by the circumstances of that
2 relationship you just described?
3 MR. REIS: Absolutely. And typically one can
4 understand how that happens in human dynamics. Some
5 corporation comes from wherever and says we need local
6 counsel, we have general counsel. We have a huge firm
7 somewhere else. The instructions, invariably, to local
8 counsel are: Sit down, take it easy, send us a bill every
9 once in awhile for 50 or 100 bucks. We only want you to sign
10 pleadings, that's all we want you to do. Now, that's not wise
11 but economics being what they are it's done. So there is a
12 tremendous level of risk.
13 MR. WILSON: Well, I ask because part of our charge is
14 not just to recommend to the court rules that govern the
15 conduct of lawyers, it's also to try and assess and provide
16 for rules that will protect the public who hire the Nevada
17 lawyers who operate under the conditions that they do. And
18 for our purposes you're saying statistically that the risks
19 are substantially high where the role of the Nevada lawyer is
20 nominal, it vastly increases the risk to the Nevada client and
21 it also vastly increases the risk of malpractice to the Nevada
22 lawyer who's operating as nothing, really, but a conduit, and
23 it may increase the risk of the lawyer who's really doing the
24 work out of state.

1 MR. REIS: Right. There's one other component, as
2 those types of cases tend to be more weighty, more valuable,
3 the losses tend to be higher, the losses to clients tend to be
4 more significant.
5 MR. TURNER: How would you remedy that situation, in
6 the sense of would you require only Nevada counsel to be
7 involved where the client is always going to associate with
8 general counsel? How would you remedy that?
9 MR. REIS: I don't know that there is a remedy one can
10 immediately institute by making a rule. I think the rules are
11 there and I think the remedy is to simply say strongly in the
12 right case to the supreme court, if you will, or from the bar
13 counsel disciplinary office, that we hold a Nevada lawyer and
14 any out-of-state lawyers working on the case to the same
15 standard and it matters not whether you're here to sign a
16 pleading, deliver something to the court or only to talk to
17 the client, you're responsible for the case and responsible
18 for everything that goes on within it. That will be a bitter
19 pill for some and difficult for clients in some cases who may
20 want to keep their litigation costs down, but I think it's
21 absolutely necessary.
22 MR. WILSON: What recommendations would you give to
23 us -- this is a broad invitation -- but what recommendations
24 would you give to us that we should consider in formulating

1 recommendations to the supreme court for the rules that they
2 should adopt governing the practice of law?
3 MR. REIS: I think what we as a company have to say is
4 really embodied in the last part of the statement that we've
5 given you. I would only suggest that our thought about
6 multijurisdictional practice is: It's here. Let's
7 acknowledge that it's here. Let's understand, I think, that
8 it needs to be regulated, that the regulation needs to be
9 uniform, that the level of corporation, in my own view,
10 between bars will have to increase dramatically if
11 multijurisdictional practices is going to be regulated to any
12 extent -- to an appropriate extent.
13 MR. WILSON: I don't understand that. Say that again.
14 MR. REIS: Well, I don't know how you can regulate
15 solely within Nevada the multijuristictional practice. If you
16 did solely with different rules or rules that were
17 appreciatively different than your neighbors or in other
18 states within which you may enter into a compact, I don't know
19 how successful you would be. Currently our impression is that
20 Nevada rules are pretty stringent about others coming here and
21 practicing, and yet we see a plethora of very, very inventive
22 ideas on how to work around that particular set of rules, you
23 know. You're graduating your first law school class in Las
24 Vegas, is it this year?

1 MR. WILSON: Yes.
2 MR. REIS: Were there recruiters from law firms in
3 other states holding up signs saying come with us, you can be
4 our local person? I'm being somewhat facetious but I wouldn't
5 be surprised given the appetite others have for practice in
6 Nevada.
7 MS. BECKER: There were some contacts but I don't know
8 whether they actually got on the law school premises.
9 MR. REIS: Apparently others in the nation believe that
10 practicing law here is very lucrative.
11 MR. TURNER: What about the change? It's my
12 understanding that Idaho, Washington and Oregon now have a
13 mutual or reciprocal pact that if you are a member of the
14 Washington bar you are automatically a member of the Oregon
15 and Idaho bars. How does that affect insurance and what are
16 your thoughts or concerns about that?
17 MR. REIS: Well, if you take a look in our little
18 jurisdictional sheet in the back you'll see that there's a
19 tremendous difference in terms of premiums that we charge for
20 those different areas. I think eventually -- and it's
21 probably too early to tell with that particular group. We're
22 still working under an old model that if you practice in Idaho
23 and that's your office, that's what you'll be charged,
24 according to Idaho rates, even if you go across the border to

1 Washington. To me what's going to make the difference there
2 is how uniformed, how stringent, how timely is the enforcement
3 of the rules? Now, I haven't studied all of the rules in the
4 recent past but as I recall there's not a great deal of
5 difference between the rules of professional conduct in those
6 jurisdictions.
7 MR. TURNER: There are procedural differences in
8 Nevada, significant --
9 MR. REIS: I'm sure there are. I think it boils down
10 to enforcement.
11 MR. TURNER: Responsibility.
12 MR. REIS: Right, absolutely. In terms of other
13 recommendations we might have for you, we think it can be
14 embraced, multijurisdictional practice. We think that it can
15 be great for clients and for lawyers as long as everyone goes
16 into this knowing the exposures we're going to face and
17 understanding that for the first couple of years it will be
18 pretty bumpy in a number of different areas, but that the
19 light at the end of the tunnel is pretty nice daylight if you
20 look at ultimate client service. If everyone is willing to
21 hold lawyers to a standard and police that standard that
22 perhaps is higher or at least more often policed than it is
23 currently.
24 MR. WILSON: What do the rules address in that

1 relationship? That is, if this court were to provide rules of
2 management and standards, enforcement of standards where you
3 would have multi-district practice, an out-of-state firm with
4 an office here, multiple offices here, what rules should we
5 think about recommending about how we define those standards
6 and how we enforce them and what obligations we impose not
7 just on the lawyers who live here but lawyers who are
8 practicing in some of those states where multi is confirmed.
9 in Nevada?
10 MR. REIS: I think, initially, a couple of things.
11 I've given a great deal of thought to it. Excellent question.
12 One of them is: What can you do with Rule 1.1? Should it
13 have a component that says I'm held to every standard in every
14 state in which I walk into or have a client and therefore in
15 Nevada I know, or have reasonably taken steps to have learned,
16 what I need to do to become competent in terms of following
17 the rules.
18 MR. WILSON: So if that is to say that the lawyer in
19 Idaho or California or some other state who belongs to a firm
20 which is multijurisdictional is doing work in Nevada, that the
21 requirements for the admission of practice ought to meet
22 Nevada's standards?
23 MR. REIS: And I think that you can go further with
24 that and require CLEs, at least on an interim basis, for

1 everyone who wishes to come here so they have some minimal
2 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. REIS: 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.

1 MR. WILSON: Any other recommendation? This has been
2 helpful.
3 MR. REIS: I appreciate that. Thank you for the
4 invitation. I would say your convening this particular group
5 prior to the ABA's deliberation on the topic is, I think, a
6 good one. Our perspective is open and available to you any
7 time. We'll be happy to run anything we can with our claims.
8 Our systems are better all the time and we can work more
9 diligently on statistics as we divide and evaluate conflicts,
10 which may be constructive. Sometimes it's not overly so.
11 But we think it's certainly good discussion and would
12 suggest to you we're happy, have always been and certainly are
13 now, that ALPS is the carrier for lawyers in Nevada, endorsed
14 by the state bar, and we hope that goes on and we're happy
15 because we know what the playing field is and that's what
16 we're interested in.
17 MR. WILSON: Any other questions?
18 MR. MOWBRAY: I would like to just thank you for coming
19 down and tell Mr. Bento hello.
20 MR. REIS: I'll do that. Thank you very much.
21 MR. WILSON: Thank you. If we can think of anymore
22 questions I guess we can reach you by phone, can't we?
23 MR. REIS: Absolutely, any time.
24 MR. WILSON: Thank you very much. Any other testimony?

1 MR. HAMILTON: Yes. Based on this gentleman's
2 testimony I would like to point out a couple of things. On
3 the responsibility of local versus out-of-state, Rule 155
4 Subsection 5, says that they will share responsibility if
5 there is a fee splitting arrangement whereas if there's just
6 an hourly arrangement there are a number of cases that say
7 that the local counsel is not necessarily responsible for the
8 out-of-state counsel's screw-up and vise versa depending on
9 who did the act. So there's not vicarious liability except in
10 a fee splitting arrangement under 155.5.
11 MR. WILSON: What should the rule be?
12 MR. HAMILTON: I think there ought to be vicarious
13 liability if you're going to require local counsel. In other
14 words, give local counsel some club to make the out-of-state
15 counsel do the right thing. But that, I just thought I would
16 like to bring that part up. The other thing, I didn't realize
17 that you were going the scope of discipline here. If I had my
18 way we would disperse with the disciplinary committees,
19 appoint judges to hear all of disputes and have a rocket
20 docket like they do in Virginia. You have a complaint against
21 you and it gets taken care of in 60 or 90 days, and I think
22 that ought to be across the board.
23 MR. WILSON: What's the lag here?
24 MR. HAMILTON: It could be a year, more than a year.

1 MR. WILSON: Really?
2 MR. HAMILTON: Yeah.
3 MR. WILSON: I didn't know that.
4 MR. HAMILTON: It takes a long time. I've seen
5 cases --
6 MS. PISCEVICH: Only if they go, if they contest it and
7 get continuances.
8 MR. HAMILTON: Wait a minute.
9 MS. PISCEVICH: You get a complaint, you have to
10 respond in 30 days, then you get an evaluation in 30 days,
11 then there's some other things that happen. But your first
12 evaluation is done in 60 to 90 days.
13 MR. HAMILTON: That is -- I've sat on screening panels
14 and that's not always true.
15 MS. PISCEVICH: Those rules were in effect when I was
16 state bar president, that's why I know about them. There are
17 cases that go on much longer --
18 MR. HAMILTON: Yes.
19 MS. PISCEVICH: Especialy when they get counsel
20 involved, ask for continuances, et cetera, et cetera. But
21 those are the minority, not the majority.
22 MR. HAMILTON: I agree with you but I still think that
23 there ought to be a rocket docket for complaints. And the
24 other problem is finding a screening panel a lot of times.

1 It's hard to find dates when three or five of the people are
2 available. At least I've gotten a number of calls about that.
3 I think if you want to cut down the harm of both in-state and
4 out-of-state lawyers, the disciplinary process ought to be
5 speeded up with some constraints. Sixty to ninety days to
6 resolve a complaint from one -- the response of the lawyers
7 in.
8 MS. PISCEVICH: That is the case.
9 MR. HAMILTON: Well, it wasn't when I was in the --
10 MS. PISCEVICH: I understand. I'm telling you, the
11 rules have been changed and they started when I was state bar
12 president and I can tell you the people who are on the
13 committee. So I know that there is a procedure in place where
14 they are screened within 90 days, and I know that they are
15 current. They were when I left and I think they still are. I
16 don't have any input now into discipline, I haven't for years,
17 but when I left they were fine. Now, I know that there are
18 cases that are contested that go on.
19 MR. HAMILTON: But that's not my point. Sixty to
20 ninety days for a screening I don't think is good enough.
21 MS. PISCEVICH: Well, I think it is.
22 MR. HAMILTON: I think 60 to 90 days for --
23 MS. PISCEVICH: The party gives you 30 days to reply to
24 something, so we have to do something that gives you some

1 procedural due process. If I get a complaint against me I
2 don't have to respond in three days, I can go find the file
3 and do whatever what I want to do in 30 days. This is a
4 reasonable time. Then it's screened within the next 30 days.
5 MR. HAMILTON: Well, I disagree but that's something --
6 MR. WILSON: We'll take your point. Thank you. Any
7 other testimony? Okay. Well, I think we'll close the hearing
8 and I gather lunch is on the cart. Let's recess.
9 -oOo-
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1 I, SUSAN E. THOMAS, CCR #655, do hereby certify that
2 the foregoing transcript, consisting of pages 1 through 118,
3 is true and correct to the best of my knowledge, skill and
4 ability.
5 DATED: This 11th of October, 2001.
6
7 SUSAN E. THOMAS, CCR #655.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24