

REPORT
OF THE
SUPREME COURT OF NEVADA
COMMISSION ON
MULTIJURISDICTIONAL PRACTICE

November 2001

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COMMISSION ON MULTIJURISDICTIONAL PRACTICE

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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. Alf [Board of Governors]

Alf & 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 [Board of Governors]
Las Vegas

Allen W. Kimbrough [Reporter (*ex officio*)]
State Bar of Nevada
Las Vegas

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

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

The Commission also debated the role of local counsel in the *pro hac vice* context, and the recommendations below in that regard were not the unanimous view of the Commission.

The Commission therefore reached a consensus on the following proposed solutions:

- (1) The current SCR 42 procedure should be continued and expanded to include court-annexed or statutorily-required arbitrations and mediations and to appearances before administrative agencies or governmental bodies (unless the entity's own rules provide otherwise).
- (2) SCR 42 should be revised to state that there can be no more than five (5) *pro hac vice* admissions within a three-year period except upon good cause shown. The State Bar will revise its forms to show clearly on the face of the documents forwarded to the court or agency the number of prior admissions and the dates thereof in order for the court or agency to make the requisite determination.
- (3) The sponsoring or affiliated Nevada counsel shall be responsible to the Court or governmental entity for the administration of the case and for compliance with all state and local rules of practice. It is the responsibility of local counsel to ensure that the case is handled in accordance with all applicable Nevada rules.

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

The Commission heard extensive testimony regarding the involvement of non-Nevada attorneys in various transactional engagements, particularly securities offerings for private or governmental entities, estate planning, and asset protection matters. Obviously, for such transactions, *pro hac vice* admission is not available, as they are extra-judicial in nature. The Commission also recognized that there may exist a

lack of local expertise in certain of these areas that would necessitate the involvement of out-of-state practitioners for the client's needs to be best served. However, the Commission recognized that a distinction must be made between an occasional assignment for a Nevada client and the regular and ongoing representation of Nevada clients by attorneys not licensed in this jurisdiction. Accordingly, the Commission determined to recommend a procedure that would best accommodate the needs of Nevada clients, while precluding the unauthorized practice of law in Nevada.

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

- (1) Any lawyer not subject to the "safe harbor" provisions of the Nevada version of Model Rule 5.5 (see above) or otherwise covered by other provisions of the Supreme Court Rules shall register with the State Bar prior to or contemporaneously with the commencement of work for a Nevada client and shall pay an appropriate fee to the State Bar for such registration.
- (2) Such registering attorney shall associate with a licensed Nevada attorney either in private practice or in the employ of a corporate or governmental entity for which the registering attorney is performing services.
- (3) The registering attorney shall become subject to the disciplinary rules of the State Bar of Nevada and shall agree that any discipline meted out in Nevada shall be reciprocal in any jurisdiction where the lawyer is licensed.

D. CORPORATE OR GOVERNMENTAL COUNSEL

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

time licensed to practice in that jurisdiction.

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

The Commission's recommendations are as follows:

- (1) An attorney employed by a corporation or other entity situated in or doing business in Nevada or an attorney employed by a Nevada governmental entity shall be eligible for admission in Nevada for limited purposes.
- (2) Such attorney shall be duly admitted to practice and be in good standing in another state and shall provide to the State Bar evidence of such good standing on an annual basis.
- (3) Such attorney shall register with the State Bar and shall pay an annual fee identical to that paid by licensed Nevada attorneys of comparable longevity.
- (4) Such attorney shall be subject to discipline by the State Bar and shall fulfill the same continuing legal education requirements as prescribed for licensed Nevada attorneys.
- (5) Such attorney shall not be permitted to appear in the courts of the state (unless otherwise allowed by applicable law) but shall be permitted to communicate with third parties on the employer's behalf.
- (6) Such attorney shall not render legal services for nor give legal

advice to any persons other than the employer.

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

E. LEGAL SERVICES ATTORNEYS

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

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

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

- (1) Any attorney licensed and in good standing in another jurisdiction would be eligible for admission to the State Bar of Nevada for so long as that person was in the employ of a non-profit legal services organization.
- (2) Such attorney would be required to submit to the character and fitness process required of all new admittees to the State Bar.
- (3) Such attorney would pay annual bar dues and would be subject to the continuing legal education requirements imposed by the Supreme Court.
- (4) Such attorney would at all times work under the supervision of an attorney licensed and in good standing in Nevada.

F. ASSISTANT DISTRICT ATTORNEYS IN RURAL COUNTIES

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

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

G. MULTI-STATE LAW FIRMS

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

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

The larger concern of the Commission was not with those firms who wish to open a full-time Nevada office and to practice under an established firm name, but rather was with the current practice of the nominal presence of out-of-state attorneys through "storefront" offices in which an out-of-state attorney attempts to practice in Nevada through a post office box (or similar means) or through the employment of a "figurehead" Nevada attorney who neither controls the work being performed nor is accountable for its accuracy. It was recognized by the Commission that this scenario occurs primarily in the litigation context.

The problems associated with this nominal presence approach include the inability of the courts to coordinate the flow of a litigation matter or to schedule hearings on an expeditious basis, as well as the inability of Nevada counsel to serve pleadings upon or communicate effectively with such out-of-state counsel.

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

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

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

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

- (1) All law firms based in another state shall register as a firm with the State Bar of Nevada and shall pay an annual fee for such registration.
- (2) Such firm shall annually provide to the State Bar the names

and addresses of all attorneys employed by the firm and shall certify that such attorneys are in good standing in the state of their licensure (which shall be identified).

- (3) Such firm shall maintain a permanent office in the State of Nevada in which shall reside a principal or shareholder of the firm, who shall be the designated agent for service of process in the state.
- (4) Such firm shall be required to disclose in writing to its clients in Nevada that not all members of the firm are licensed to practice in this state and what services will be performed by out-of-state lawyers.
- (5) Such firm shall maintain trust accounts in accordance with SCR 78.5 with all funds resulting from any matter in Nevada being maintained solely in those accounts.
- (6) Such firm shall comply fully with SCR 199.

H. CLIENT PROTECTION ISSUES

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

To that end the Commission recommends the following:

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

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

I. ADMISSIONS PROCEDURES

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

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

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

VI. Implementing Rules

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

Respectfully submitted,

SUPREME COURT COMMISSION ON
MULTIJURISDICTIONAL PRACTICE

Thomas R. C. Wilson II, Chair
The Hon. Nancy A. Becker
The Hon. Jack B. Ames
The Hon. James W. Hardesty
The Hon. Ronald D. Parraguirre
Matthew C. Addison
Nancy L. Alf
John A. Curtas
Neil G. Galatz
M. Ann Morgan
Dean Richard J. Morgan
John H. Mowbray
Bridget Robb Peck
Margo Piscevich
John P. Schlegelmilch
Gloria J. Sturman
William C. Turner
Allen W. Kimbrough, Reporter

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 .

– 12. 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 23, 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.

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

(a) Appearance in ~~court~~ Defined Proceedings-

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

(ii) State bar statement. *****

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

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

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

34. *Verified application.* The verified application required by this rule shall be on a form approved by the State Bar of Nevada and available at the county clerk's office of the court, arbitrator, mediator, or administrative or governmental agency where such ~~cause-Defined Proceeding~~ is pending and shall state: (a) the applicant's residence and office address; (b) the court or courts to which the applicant has been admitted to practice and the date of such admission; (c) that the applicant is a member in good standing of such court or courts; (d) that the applicant is not currently subject to any disciplinary proceedings by any organization with authority to discipline attorneys at law; (f) whether the applicant has ever received public discipline including, but not limited to, suspension or disbarment, by any organization with authority to discipline attorneys at law; (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 ~~barBar~~ of Nevada; and (l) that the applicant certifies that he or she shall be subject to the disciplinary jurisdiction of the State Bar of Nevada.

45. *****

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

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

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

67. *****

78. *****

89. *****

910. *Failure to renew.* Any out-of-state counsel who continues to act as counsel in the ~~cause~~ Defined Proceeding and fails to pay the renewal fees set forth in subsection 8-9 of this rule shall be suspended from appearance in any ~~cause-Defined Proceeding~~ upon expiration of a period of 30 days after the anniversary date. The Executive Director of the State Bar of Nevada shall notify the out-of-state counsel and the Nevada counsel of record of the suspension and shall file a

certified copy of the notice with the court, arbitrator, mediator, or administrative agency or governmental body where the cause-Defined Proceeding is filed, with the county clerk of each county, and with the clerk of the ~~supreme-Supreme court~~Court of Nevada.

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

~~1112~~. *****

~~1213~~. *Discipline.* Out-of-state counsel shall be subject to the jurisdiction of the courts and disciplinary boards of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of Nevada. He or she shall familiarize himself or herself and comply with the standards of professional conduct required by members of the State Bar of Nevada and shall be subject to the disciplinary jurisdiction ~~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.

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

SCR ____. Practice of private attorneys not admitted to Nevada in extra-judicial matters.

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

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

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

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

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

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

(2) The courts before which the attorney has been admitted to practice and the dates of admission.

(3) That the attorney is currently a member in good standing of, and eligible to practice law before, the bar of those courts.

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

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

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

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

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

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

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

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

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

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

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

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

8. *Reinstatement.* The out-of-state attorney may be reinstated upon the payment of the fees set forth in subsection 6 of this rule and a \$50 late penalty. Upon payment of all accrued fees and late penalty, the Executive Director may reinstate the out-of-state counsel and shall notify the out-of-state counsel and the Nevada counsel of record of the reinstatement.

SCR 49.____. Limited practice of attorneys employed in government or as in-house counsel.

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

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

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

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

(2) The name, address, and telephone number of the attorney's employer.

(3) The courts before which the attorney has been admitted to practice and the dates of admission.

(4) That the attorney is currently a member in good standing of, and eligible to practice law before, the bar of those courts.

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

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

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

ATTACHMENT C

TRANSCRIPT OF PUBLIC HEARING
SEPTEMBER 28, 2001
LAS VEGAS

ATTACHMENT D

TRANSCRIPT OF PUBLIC HEARING
OCTOBER 3, 2001
RENO