

## Summary of State Action on ABA MJP Recommendations 8 &9

Prepared by Professor Laurel Terry ([LTerry@psu.edu](mailto:LTerry@psu.edu)) on 9/26/09 based on information contained in a chart prepared by the ABA Center for Professional Responsibility, dated 9/23/09, available at <http://www.abanet.org/cpr/mjp/recommendations.pdf>

**Table 1: A Summary of State Action Regarding ABA MJP Recommendation #8, which recommended adoption of the ABA Model Rule for the Licensing of [Foreign] Legal Consultants [“the ABA Model FLC Rule”]**

**Current Status of FLC Rules:** Thirty-one jurisdictions now have a foreign legal consultant rule. These include: 1) Alaska, 2) Arizona, 3) California, 4) Connecticut, 5) Delaware; 6) the District of Columbia, 7) Florida, 8) Georgia, 9) Hawaii, 10) Idaho, 11) Illinois, 12) Indiana, 13) Iowa; 14) Louisiana, 15) Massachusetts, 16) Michigan, 17) Minnesota, 18) Missouri, 19) New Jersey, 20) New Mexico, 21) New York, 22) North Carolina, 23) North Dakota, 24) Ohio, 25) Oregon, 26) Pennsylvania, 27) South Carolina, 28) Texas, 29) Utah, 30) Virginia, and 31) Washington. Many of these rules vary significantly from the ABA Model FLC Rule. To compare the ABA Model Rule with an individual state FLC rule, see the comparison chart available at [http://www.abanet.org/cpr/mjp/silver\\_flc\\_chart.pdf](http://www.abanet.org/cpr/mjp/silver_flc_chart.pdf). For links to these rules, see <http://www.abanet.org/cpr/mjp/home.html>.

MJP Rec. #8, ABA Model FLC Rule  <a href="#">(Link to rules)</a>	Adopted a new FLC rule or made changes to an existing rule ( <a href="#">Link to rules</a> - lower right)	Recommended a new rule or changes to an existing rule (Pending)	Already had an FLC rule & wrote a report saying they have chosen not to amend it	The State is conducting a review [that should include MJP Recommendation #8 – the FLC rule] <sup>1</sup>	No review pending or did not include MJP Rec. #8 as part of their MJP report	Doesn't have an FLC rule & recommend ed or decided not to adopt an FLC rule
Numbers	9	2	3	14	23	0
	DE GA IA ID ND PA SC TX VA	MS (Bar C'ee sent to Court) WI (pending)	AZ CA FL	AK (have an FLC rule) , AR, HI, IL (have an FLC rule), IN(have one) MI (have one), MN (have one), MT, NH, OH (have one), OR (have one), SD, UT (have one), WA (have one)	AL, CO, CT (have an FLC rule), DC (have an FLC rule), KS, KY, LA (have one), MA (have one), MD, ME, MO (have one), NC (have one), NE, NM (have one), NV, NJ (have one), NY (have one-model for ABA), OK, RI, TN, VT, WV, WY	

<sup>1</sup> For most states, the ABA Center for Professional Responsibility status chart (on which this chart is based) contained a separate listing regarding each of the six ABA MJP Recommendations that might be implemented: 1) Rule of Professional Conduct 5.5; 2) Rule of Professional Conduct 8.5; 3) Pro Hac Vice Admission; 4) Admission by Motion; 5) FLC Admission; and 6) Temporary Practice by Foreign Lawyers. For a few states, however, the ABA chart did not include a separate item-by-tem listing for each of the six MJP recommendations, but instead included a statement that the state is conducting a review. These states are HI and VT.

**Terry Table, page 2 (9/26/09): A Summary of State Action Regarding ABA MJP Recommendation #9, which recommended adoption of the ABA Model Rule for Temporary Practice by Foreign Lawyers**

**Current Status of Foreign Lawyer Temporary Practice Rules:** The ABA Model Rule for Temporary Practice by Foreign Lawyers was approved in August 2002. (In contrast, the ABA Model FLC Rule dates from 1993). To date, six jurisdictions have adopted a rule that explicitly refers to foreign lawyer temporary practice. They are: 1) Delaware; 2) Florida; 3) Georgia; 4) New Hampshire, 5) Pennsylvania, and 6) Virginia. In addition, North Carolina’s rule appears to permit such temporary practice by omitting reference to the word “U.S. jurisdiction.” The District of Columbia UPL committee issued an opinion indicating this is permitted (but recommended an explicit rule.) With respect to format, Georgia added a new Rule of Professional Conduct 5.5(e) that incorporates the provisions of the ABA Model Rule for Temporary Practice by Foreign Lawyers; Virginia’s Rule 5.5(d) addresses foreign lawyers; Pennsylvania, and Delaware added the words “or in a foreign jurisdiction” to Rule 5.5(c); North Carolina omitted the words “another U.S. jurisdiction” from Rule 5.5(c). Currently, six jurisdictions permit foreign in-house counsel to practice under Rule 5.5(d) (or an equivalent provision).

<b>MJP Rec. #9 ABA MODEL RULE for Temporary Practice by Foreign Lawyers</b>	<b>Has adopted a new Temp. Practice rule</b>	<b>Has recommended a new rule (it’s pending)</b>	<b>MJP Rec. #9 is under consideration<sup>2</sup></b>	<b>Did not include MJP Rec. #9 as part of their MJP report</b>	<b>Considered the issue and decided not to recommend or adopt Rec. #9</b>	<b>Permits foreign lawyers to practice under the in-house counsel rule (<a href="#">Link to rules</a>)</b>
Numbers	7	3	19	21	1	6
	<a href="#">DE</a> <a href="#">FL</a> <a href="#">GA</a> <a href="#">NH</a> <a href="#">NC</a> <sup>3</sup> <a href="#">PA</a> <a href="#">VA</a>	LA(bar approved, sent to court, review pending) MS (Bar C’ee approved, sent to court DC (UPL C’ee Op. <a href="#">14-04</a> ; recommends rule)	AK, AR, CA, HI, IL, IN, IA, MI, MN, MT, ND, NY, OH, OR, SC, SD, TX <sup>4</sup> , UT, WA	AL, CO, CT, ID, KS, KY, MA, ME, MD, MO, NE, NM, NV, NJ, OK, RI, TN, VT, WI, WV, WY	AZ	<a href="#">AZ</a> <a href="#">CT</a> <a href="#">DE</a> <a href="#">VA</a> <a href="#">WA</a> <a href="#">WI</a>

<sup>2</sup> For many states, the ABA Center for Professional Responsibility status chart contained a separate listing regarding each of the six ABA MJP Recommendations that might be implemented: 1) Rule of Professional Conduct 5.5; 2) Rule of Professional Conduct 8.5; 3) Pro Hac Vice Admission; 4) Admission by Motion; 5) FLC Admission; and 6) Temporary Practice by Foreign Lawyers. The ABA CPR status chart included this type of listing for the states included in this column of this chart. In contrast, for Hawaii and Vermont, the ABA chart did not include a separate item-by-item listing for each of the six MJP recommendations, but instead included a statement that the state is conducting a review.

<sup>3</sup> North Carolina’s version of Rule of Professional Conduct omits the words “U.S. jurisdiction.” Read literally, North Carolina’s rule appears to authorize temporary practice by foreign lawyers, a view confirmed by one North Carolina lawyer. I have added this caveat because this chart summarizes the ABA status chart and because the ABA chart states that North Carolina “did not study [this rule] and has no plans to do so. Do not have a rule.”

<sup>4</sup> The ABA chart leaves this entry blank, but notes that the Texas State Bar Disciplinary Rules of Professional Conduct is conduct a review regarding Rules 5.5 and 8.5.