LAURA M. FRANZE
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
1700 Pacific Avenue
Suite 4100
Dallas, Texas 75201

ADVANCED EMPLOYMENT LAW COURSE 2002
January 24-25, 2002
Houston, Texas
CHAPTER 12
BIOGRAPHICAL INFORMATION

EDUCATION

Thiel College, Greenville, Pennsylvania (B.A., summa cum laude, 1976)
Duke University School of Law (J.D., 1979)

PROFESSIONAL ACTIVITIES

Partner, Akin, Gump, Strauss, Hauer & Feld, L.L.P. - Dallas - Head of Labor Section
Board Certified, Labor and Employment Law (since 1984)
Past Chair of the Dallas Bar Association Employment Law Section (1993-present)
Past-President, Dallas Area Labor and Employment Law Group (1986-87)
Advanced Labor Law Committee, State Bar of Texas (1993-present)
Member, Fellows of the Dallas Bar Association (1994-present)
Vice Chair, Dallas AIDS Commission Legal/Ethical Task Force (1988)
Member, College of the State Bar of Texas (since 1991)
Member, Pro Bono College of the State Bar of Texas (since 1996)
Member, Leadership Dallas (1996-97)
Legal commentator on employment and civil rights matters on KXAS TV Channel 5 —
Dallas/Fort Worth Local NBC Affiliate

LAW RELATED PUBLICATIONS, ACADEMIC APPOINTMENTS AND HONORS

Appears in BEST LAWYERS IN AMERICA, all editions since 1995, and in numerous
WHO'S WHO, editions
Editor and Chief Author of TEXAS EMPLOYMENT LAW, published by James Publishing (1998,
updated through 2001)
Author, PRIVACY IN THE WORKPLACE ANSWER BOOK, to be published by Aspen Law &
Business in 2002
General Editor/Author, EMPLOYMENT ISSUES FOR TECHNOLOGY COMPANIES, to be published by
Law Journal Press in 2002
Author, Certification of Employment Discrimination Class Actions under Civil Rights Act of 1991,
Washington Legal Foundation (March, 2000)
Author, Costly Discrimination, Texas Lawyer (July 12, 1999)
Author, The Linda Tripp Phenomenon, Texas Lawyer (February 12, 1999)
Author, Temp Work May Lead to Long-Term Problems, Texas Lawyer (June 1, 1998)
Author, Joe’s Stone Crab Case, Texas Lawyer (1998)
Joe’s Stone Crab, The Washington Legal Foundation (April, 1998)
Author, Not Ready for Prime Time, Texas Lawyer (December 15, 1997)
Author, The New Sex Discrimination Issues: Funneling, Shoulder Tapping and the Interest
Defense, State Bar of Texas (1996)
# TABLE OF CONTENTS

## I. INTRODUCTION

## II. COMPLEXITY OF A MULTIJURISDICTIONAL PRACTICE

A. Defining the Practice of Law


C. Other Recent Cases Impacting UPL Precedent


D. Areas of Law Most Likely to be Impacted by UPL Restrictions

1. Out-of-State Litigation and the Rules for Admission *Pro Hac Vice*

2. Non-Litigation Activities

3. Exceptions for In-House Counsel

4. Sanctions for Committing UPL

## III. PROPOSED MODEL RULES ADDRESSING UPL IN A MULTIJURISDICTIONAL AGE

A. ABA Commission on Multijurisdictional Practice

1. State judicial licensing and regulation of lawyers should be continued.

2. As a general rule, attorneys licensed in another United States jurisdiction should not be guilty of UPL by rendering legal services on a temporary basis in another jurisdiction

3. Safe harbors for out-of-state attorneys

4. Safe harbors for in-house counsel

5. Adoption of a model “admission on motion” rule

6. Adoption of a model state *pro hac vice* rule for practice before state courts and administrative agencies

7. Establishment of an ABA Coordinating Committee on Multijurisdictional Practice

B. Restatement (Third) of the Law Governing Lawyers

## IV. Texas Law

## V. IMPACT OF TECHNOLOGY ON THE UPL DEBATE

A. Self-help Computer Programs and UPL

B. E-mail and Law Firm Websites

## VI. CONCLUSION
LAW WITH NO BORDERS: UNAUTHORIZED PRACTICE OF LAW IN THE MULTIJURISDICTIONAL AGE

I. INTRODUCTION

The practice of law is primarily regulated by the states. Unfortunately, many of the states’ definitions of “the practice of law” and “the unauthorized practice of law” (“UPL”) are outdated and do not protect attorneys engaged in multijurisdictional practices. This paper discusses the areas practitioners should be aware of to avoid UPL violations.

II. COMPLEXITY OF A MULTIJURISDICTIONAL PRACTICE

Virtually everyone agrees that employment-related litigation has exploded in the last two decades. According to some reports, more than twenty-five percent of the nation’s civil docket involves workplace disputes. And no wonder, virtually any employment decision—from hiring to termination and everything in between—can become the subject of a potential lawsuit. For the multi-jurisdictional employer, discrimination avoidance has always made consistency of policy important, but that importance has been increased exponentially with work-sharing aspects of the internet, the resulting increased communications among plaintiffs’ lawyers and local unions in different parts of the country, and the increased ease in gathering information on the workforce in the information age. Nationwide employers, such as Wal-Mart, have found that positions taken in litigation in one part of the country directly impact cases thousands of miles away. Moreover, new technology has made nearly every major employer grist for the “chat room” on specialized anti-employer or industry websites, overshadowing the traditional water cooler exchange of information.

While coordination of labor and employment litigation and policy has become essential for the multijurisdictional employer, attorneys for such companies continue to be bound by outdated exclusionary practice provisions in at least 49 states, raising the specter of an unauthorized practice of law (“UPL”) violation whenever lawyers cross state lines—literally and figuratively—in representing their clients. The unauthorized practice of law rules have traditionally been applied to individuals who are not licensed in any jurisdiction. However, more and more frequently, these rules have been applied to lawyers who give advice and counsel outside of the borders of the state or states in which they hold a license.

The issue is seldom a problem for litigators since a lawyer who is licensed to practice in one state is generally allowed to appear before the court of another state with permission of the court, or “pro hac vice.” But for the transactional attorney, or for the attorney who practices non-traditional litigation, the issue is less clear. Since labor and employment attorneys are both litigators and transactional attorneys, the issue takes center stage within our practice. The employment attorney counsels, negotiates, investigates, and pursues strategy on the “restructuring” of the workforce. Employment lawyers also represent their clients before governmental agencies—like the NLRB, OSHA, DOL, and their state counterparts—outside of traditional state and federal courts. Increasingly, employment lawyers are also called to participate in alternative dispute resolution proceedings such as arbitration, conciliation, and mediation. Each of these facets of employment law representation may raise ethical issues when the lawyer engages in multi-jurisdictional practice. Many states place an emphasis on where the attorney is physically located when giving advice. Therefore, the use of e-mail and the internet in dissemination of legal advice raises its own concerns.

Although multijurisdictional practice has become the norm, state UPL provisions make no distinction between work performed by non-lawyers versus out-of-state lawyers. And while Maryland, Michigan, Virginia, and the District of Columbia have modernized their rules somewhat, the vast majority of states adhere to rules better suited to a slower age. The following provides an overview of the current status of UPL jurisprudence in the United States, discusses important cases weighing in on this issue, and assesses the potential impact of computer technology on the future formation of new UPL rules and statutes.
A. Defining the Practice of Law

The practice of law is primarily regulated by the states. Each state has its own rules and procedures for gaining admittance to the bar, as well as its own definitions of what constitutes the unauthorized practice of law. Moreover, the states’ definitions of what encompasses “the practice of law” and “the unauthorized practice of law” are equally diverse. (See Appendix A for a listing of state statutes). For example, in Texas, the practice of law is defined as:

the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined. Tex. Gov’t Code § 81.101(a) (Vernon Supp. 2002).

However, the Texas Legislature recently amended section 81.101 to exclude from the definition of the practice of law “the design, creation, publication, distribution, display, or sale” of written material, computer software “or similar products” designed to allow lay people to render their own legal services, such as drafting a will or contract, as long as the products “clearly and conspicuously state that the products are not a substitute for the advice of an attorney.” Tex. Gov’t Code § 81.101(c) (Vernon Supp. 2002). This amendment was in direct response to the Honorable Barefoot Sanders’ decision in Unauthorized Practice of Law Committee v. Parsons Technology, Inc., No. Civ. A. 3:97CV-2859H, 1999 WL 47235 at *1 (N.D. Tex. Jan. 22, 1999), vacated by 179 F.3d 956 (5th Cir. 1999) (vacated in light of amendment to § 81.101). (See V.A infra).

Unfortunately, not all statutes clearly and specifically define what constitutes “practicing law.” In fact, many state statutes relating to the “unauthorized practice of law” simply make it unlawful for attorneys not licensed in the state to “practice law” while others describe in great detail what actions constitute UPL. Compare KY Rev. Stat. Ann. §524.130(1) (Banks-Baldwin, WESTLAW through 2001 Reg. Sess.) (“a person is guilty of unlawful practice of law when, without a license issued by the Supreme Court, he engages in the practice of law, as defined by the Supreme Court) and S.C. Appellate Court Rules, Rule 5.5 (“a lawyer shall not [p]ractice law in a [j]urisdiction where doing so violates the regulation of the legal profession in that jurisdiction.”), with Minn. Stat. Ann. §481.02 (1990 & Supp. 2001) (making it unlawful for individuals not admitted to the Minnesota State Bar to practice law, including “giv[ing] legal advice . . . prepar[ing] legal documents . . . advising or counseling in law . . . furnishing to others the services of a lawyer . . . prepar[ing] . . . any will or testamentary disposition or instrument of trust [or] any other legal document”). But what each states’ regulations have in common is this: they are usually vague and ambiguous, outdated, and rarely enforced, despite rampant noncompliance. The purpose behind these laws has also remained constant throughout the United States: to protect “the public against the rendition of legal services by unqualified persons.” Comment to ABA Model Rule of Professional Conduct Rule 5.5.

Under traditional analysis, providing legal services while being physically within a state where you are unlicensed to practice and not associated with local counsel or engaged in litigation, would appear to be a clear violation of the unauthorized practice of law provisions. In fact, that basic standard still holds true today in that an attorney cannot legally “hang out his shingle” and provide legal services in a state where he is not licensed. However, the impact of new technology, combined with the increasing numbers of national corporations and the subsequent need for and growth in the number of multijurisdictional practices in this country, has given rise to situations where attorneys licensed in one state frequently find themselves representing clients in disputes outside their state of licensure. More often than not, such representations pose no threat to the client or the sanctity of law in the “foreign” jurisdiction. However, outdated UPL laws often fail to except these new types of representation. For example, few states have pro hac vice type procedures to allow an attorney licensed in another state to represent clients in
arbitration, mediation, or administrative hearings. Two other areas of a potential conflict involve in-house counsel and attorneys conducting purely transactional or investigatory work not likely to lead to litigation. For example, many in-house attorneys are licensed in one state and are subsequently transferred by their employer to a corporate office in another state. Few statutes create exceptions to UPL rules for in-house counsel, despite rampant no-compliance with laws that would encompass the in-house counsel’s “practice.” Similarly, few statutes allow attorneys to represent clients in alternative dispute resolution or administrative settings if they are not licensed in the state where the proceedings take place. Although it is rare that a UPL complaint will arise from such representations, the threat of sanctions is always present for these practitioners. To make matters worse, the most likely scenario for a UPL violation to surface is when the client decides it does not want to pay the out-of-state lawyer for her services. To avoid paying fees owed, clients can easily defend by claiming that the attorney was not licensed to practice in that state, committed a UPL, and, therefore, should be sanctioned by not receiving payment for those illegal services. This scenario is not far-fetched and has been played out recently in California.

B. Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court, 949 P.2d 1 (Cal. 1998)

In 1998, the California Supreme Court brought the issue of UPL in the age of multijurisdictional practice to the forefront of legal debate across the country. In Birbrower, the California Supreme Court held that a New York law firm, whose attorneys were not licensed to practice law in California, engaged in the unauthorized practice of law by representing their client in preparation for arbitration in California. 949 P.2d at 2-3. Specifically, the New York attorneys traveled to California on a number of occasions to advise the client on various matters relating to a contract dispute as well as to interview potential arbitrators to conduct arbitration of the contract dispute. Id. at 3-4. The attorneys also completed some work in New York. Id. The case settled before going to arbitration and the client subsequently sued the New York firm for legal malpractice and related claims. Id. at 4. The firm counterclaimed for payment of attorneys’ fees for the work it performed in California and New York. Id.

The court determined that the Birbrower firm had violated section 6125 of the State Bar Act, which simply states “[n]o person shall practice law in California unless the person is an active member of the State Bar.” CAL. BUS. & PROF. CODE § 6125 (West 2001). A violation of section 6125 is a misdemeanor. CAL. BUS. & PROF. CODE § 6126(a) (West 2001). More importantly, a person who violates the section may not recover attorneys’ fees for the violative services. Birbrower, 949 P.2d at 5, 10-11. The Birbrower court noted that section 6125 does not define “practice of law” or “in California,” which are both crucial phrases when applying the statute. Id. at 5. The court held that in California, the practice of law included the rendition of services inside and outside the scope of litigation, including giving legal advice and drafting legal instruments. Id. at 5. The court also discussed at length the definition of “in California.” The court held that practicing law “in California entails sufficient contact with the California client to render the nature of the legal service a clear legal representation.” Id. The court explained that courts should decide whether an attorney practiced “in California” on a case-by-case basis by focusing on the unlicensed attorney’s activities in the state and primarily considering whether the attorney “engaged in sufficient activities in the state, or created a continuing relationship with the California client that included legal duties and obligations.” Id. However, the court opined that the unlicensed lawyer’s physical presence in the state was not determinative, but was just one factor in the analysis. The court reasoned that an attorney can practice law in violation of section 6125 even if he is not physically present in California by “advising a California client on California law in connection with a California legal dispute by telephone, fax computer, or other modern technological means.” But the court affirmatively rejected the converse, that an attorney “automatically practices law ‘in California’” simply by practicing California law in the state, by his physical presence in California or his virtual presence there. Id. (emphasis added).

The court then declined to create an exception for work done that is incidental to private arbitration or other alternative dispute resolution proceedings. Id. at 133-34. Finding that the
firm’s work did not fall into any exception to the rule, the court held that the Birbrower firm violated section 6125 by practicing law in California without a license and was not entitled to recover its attorneys’ fees for work done illegally in California. Id. at 13. The court did, however, remand the case for determination of whether payment for services rendered in New York could be severed from the otherwise illegal fee agreement. Id.

Birbrower illustrates many of the potential inadequacies current statutes regulating the unauthorized practice of law and their accompanying consequences. The California Supreme Court’s unwillingness to create an exception for out-of-state attorneys to conduct arbitration related services for a California client is especially troubling because there is no alternative admissions process, such as pro hac vice admission, in the alternative dispute resolution context. As such, Birbrower essentially barred all out-of-state attorneys from representing California clients in California in an alternative dispute resolution proceeding. Moreover, associating with local counsel would not allow an out-of-state attorney to avoid Birbrower’s implications because California does not recognize an exception to section 6125 for attorneys who associate local counsel. See Birbrower, 949 P.2d at 4, n. 3.

Sensing the negative ramifications of Birbrower, the California legislature stepped in and amended Rule 983.4 of the California Rules of Court and section 1282.4 of the California Code of Civil Procedure, to allow out-of-state attorneys to represent a party in a California arbitration proceeding. Cal. Rules of Court, Rule 983.4 Out-of-State Attorney Arbitration Counsel; CAL. CIV. PROC. CODE § 1282.4 (West 2001). The new procedures are similar to traditional pro hac vice rules. Under section 1282.4, an attorney in good standing in another state, but unlicensed in California, may represent a client in a California arbitration by filing a certificate with the State Bar of California and obtaining approval for appearing from the arbitrator or arbitral forum. CAL. CIV. PROC. CODE § 1282.4(b) (West 2001). The certificate must state the following:

(1) the attorney’s residence and office address

(2) the courts where the attorney s admitted to practice and the dates of admission;

(3) that the attorney is currently in good standing and eligible to practice law before those courts;

(4) that the attorney is not currently suspended or disbarred in any court;

(5) that the attorney is not a resident of California and not regularly employed in California;

(6) that the attorney is not regularly engaged in substantial business, professional, or other activities in California;

(7) that the attorney agrees to be subject to the jurisdiction of the California courts with respect to the laws governing the conduct of California attorneys;

(8) the title of any cases and courts where the attorney has filed an application to appear pro hac vice or has filed a certificate under this section in the preceding two years; and

(9) the name, address, and telephone number of the active member of the State Bar of California who is the attorney of record. CAL. CIV. PROC. CODE § 1282.4(c) (West 2001).

Section 1282.4 also provides that attorneys in good standing in another jurisdiction may render legal services in California “in the course of and in connection with an arbitration pending in another state.” CAL. CIV. PROC. CODE § 1282.4(f) (West 2001). These changes clearly abrogate Birbrower and are a clear example of the steps legislatures must take to appropriately expand what constitutes the legal practice of law by attorneys not licensed in a given jurisdiction. But, at the same time, they add new steps that attorneys must take to ensure they are not violating the laws of a state and, as illustrated by section 1282.4, may require an out-of-state attorney to associate with local counsel in non-litigation proceedings. While many states may view this as a necessary safeguard for allowing out-of-state attorneys to practice in their jurisdiction, such requirements also increase the costs of doing business, both for the attorney and his client.
C. Other Recent Cases Impacting UPL Precedent


   In this post-Birbrower case, a California appellate court held that an out-of-state attorney and his out-of-state firm representing an out-of-state client in a California probate proceeding did not engage in the unauthorized practice of law and could, therefore, recover attorneys’ fees for all of the services rendered, including work done in California. Condon, 76 Cal. Rptr. 2d at 928. The court distinguished Condon from Birbrower because the client in Condon was not a California resident and was, thus, not a “California client” as discussed in Birbrower. The court correctly noted that the result in Birbrower was largely because the client there was a California resident. Id. ("Implicit in the court’s formulation of the rule is the ingredient that the client is a ‘California client,’ one that either resides in or has its principal place of business in California."). The Condon court also put to rest concerns that Birbrower stood for the illogical proposition that an attorney engages in the unauthorized practice of law if any services are rendered dealing with California law or are rendered by an out-of-state attorney while he is present in California (physically or virtually). As the court aptly noted, “it would be presumptuous of this court to assume that in a multi-state business transaction where parties are located in diverse states and represented by counsel in those states, the lawyers are practicing ‘California law’... Surely the citizens of states outside of California should not have to retain California lawyers to advise them on California law.” Id. However, the Condon court stated in a footnote that this result assumes that the parties have not agreed to resolve the dispute exclusively under California law, indicating that an attorney may find himself violating section 6125 if the contract at issue is governed solely by California law, even though both he and his client are not residents of California. Id. at n. 10. That troubling proposition has far-reaching ramifications for practitioners rendering non-litigation services requiring the interpretation of California law. For example, if an out-of-state attorney has an out-of-state client who wants to transact business with a California resident, the attorney may find himself engaging in the unauthorized practice of law under Condon by advising his client on the ramifications of California law on a proposed deal. Again, without safeguards for transactional attorneys, such as a system similar to pro hac vice admissions, and nothing but vague statutes ill-equipped to deal with the demands of today’s legal market, attorneys are left wondering if they are illegally rendering legal services.


   In Fought, the Supreme Court of Hawaii decided whether an out-of-state general counsel practiced law “within the jurisdiction” within the meaning of the state’s UPL statutes by rendering legal services as a consultant to client and client’s Hawaii counsel. 951 P.2d at 494-95. The court held that these actions did not constitute the unauthorized practice of law because the general counsel did not practice law “within the jurisdiction” as contemplated by the Hawaii legislature. Id. at 497-98. Fought was originally a contract dispute between Kiewit Pacific Company (“Kiewit”), a general contractor, and two subcontractors, Steel Engineering (“Steel”) and Fought & Company (“Fought”). Id. at 491-93. Fought’s general counsel, who were licensed to practice law in Oregon, assisted Fought’s Hawaiian attorneys during the appeal process regarding the contract dispute. The general counsel assisted by consulting Fought’s Hawaiian counsel regarding the appeal and preparation of Fought’s statement of position for mediation, assisting with legal research, analyzing briefs and papers, and assisting in the planning Fought’s appeal strategy. Id. at 496. Fought’s general counsel did not make any appearances on Fought’s behalf, did not draft or sign any of the papers filed, and did not communicate with the counsel for other parties on Fought’s behalf. Id. at 498. Steel opposed Fought’s request for attorneys’ fees related to the general counsel’s services, contending those services were rendered in violation of the state’s UPL statutes by assisting the Hawaiian attorneys. Id. at 493. The court disagreed. Although the court found that the services rendered by Fought’s general counsel did constitute the “practice of law,” it held that Fought’s general counsel did not render those services “within the jurisdiction” as required by statute. Id. at 497-98.
In so holding, the court noted that “[w]hile the scope of these statutes must be expansive enough to afford the public needed protection from incompetent legal advice and counsel, the transformation of our economy from a local to a global one has generated compelling policy reasons for refraining from adopting an application so broad that a law firm, which is located outside the state of Hawaii, may automatically be deemed to have practiced law ‘within the jurisdiction’ merely by advising a client regarding the effect of Hawaii’s law or by ‘virtually entering’ the jurisdiction on behalf of a client via ‘telephone fax, computer, or other modern technological means.’” *Id.* at 497 (quoting *Birbrower*, 949 P.2d at 6). In fact, the court opined that a company serving “interstate and/or international markets is likely to receive more effective and efficient representation when its general counsel, who is based close to its home office or headquarters and is familiar with the details of its operations, supervises the work of local counsel in each of the various jurisdictions in which it does business.” *Fought*, 951 P.2d at 497. In this case, the court found that the general counsel acted solely as a consultant and local counsel was at all times “in charge” of the case. *Id.* Therefore, *Fought* was entitled to fees for the general counsel’s work. *Id.*

Although there is clear language in *Fought* that simply advising a client about the ramifications of another jurisdiction’s law does not automatically establish that the attorney practiced law “in that jurisdiction,” the court also noted that in *Fought*, Fought was not a Hawaiian client because it was headquartered in Oregon. *Id.* at 498. This fact opens the door for argument that an out-of-state attorney who renders pre-litigation services to a Hawaiian client may be violating the state’s UPL laws. However, this opinion does establish that corporations may utilize their general counsel as consultants even in out-of-state litigation.

### D. Areas of Law Most Likely to be Impacted by UPL Restrictions

#### 1. Out-of-State Litigation and the Rules for Admission *Pro Hac Vice*

The problems associated with UPL effect litigators to a much less extent than they do transactional attorneys simply because a litigator can universally seek admission *pro hac vice* in courts across the U.S. Although admission *pro hac vice* requirements differ by jurisdiction, they generally require the out-of-state attorney to apply for admission with the court in which the case is presiding, show that the attorney is a member in good standing in another state, and associate with local counsel during the pendency of the case. What is less clear, however, is whether an attorney engages in the unauthorized practice of law when she provides legal services in anticipation of litigation and being admitted *pro hac vice* but before gaining admission. Although an attorney may seek admission *pro hac vice*, what happens if the case settles before the attorney seeks admission, or the client discharges the attorney and then refuses to pay for services rendered? If the jurisdiction does not have exceptions for pre-admission services, the courts would likely find that the attorney engaged in the unauthorized practice of law because the attorney rendered legal services without being admitted to practice in that state. Applying this analysis leads to the ludicrous result of essentially requiring attorneys to gain admission to a foreign court and associate with local counsel before doing any work for the out-of-state client. See *Shapiro, Lifschitz, & Schram, P.C. v. Hazard*, 24 F. Supp. 2d 66, 82 (D.D.C. 1998) (holding that retainer agreement was valid despite fact that attorney had not sought admission *pro hac vice* before entering into the retainer agreement). Unfortunately, *Birbrower* illustrates that such strange results can and will occur if outdated UPL laws are not updated to reflect the realities of today’s legal market.

### 2. Non-Litigation Activities

As seen in *Birbrower*, arbitration and other alternative dispute resolution proceedings are areas of prime concern under UPL statutes simply because most states have no process by which an attorney can seek admission *pro hac vice* for these proceedings. The same holds true for general counseling services provided by out-of-state attorneys and other temporary transactional legal services. At least one state has directly addressed this problem. Michigan’s UPL statute was amended in 2000 to exclude attorneys who are licensed and authorized to practice law in another state and is “temporarily in [Michigan] and engaged in a particular manner.” Mich. Comp. Laws. § 600.916 (2000). The District of Columbia
and Virginia have similar statutes. District of Columbia Rules of Court, Rule 49(b)(3) (excepting from the definition of the unauthorized practice of law work done “where the person’s presence in the District of Columbia is not of incidental or occasional duration.”); Va. R. S. Ct. Pt. 6, § 1 (UPL rules do not apply to attorneys licensed and in good standing in another jurisdiction and [t]he services provided [were] on an occasional basis only and incidental to representation of a client whom the attorney represents elsewhere.”).

The commentary to D.C. Rule of Court 49 makes clear that simple physical presence in the District does not automatically indicate that the attorney has committed the unauthorized practice of law. However, the commentary does indicate that the client’s location could make a difference in the analysis. Commentary to Rule 49(b)(3) (“While the rule is not intended to require admission to the District of Columbia Bar where an attorney is incidentally required to come into the city to participate in continuing service to a client located elsewhere; it is intended to require admission where an attorney is using the District of Columbia as a base from which to practice.”) (emphasis added). Once again, although Rule 49 is more explicit than most UPL regulations, there is still room for interpretation that leaves practitioners susceptible to committing a possible violation. However, the D.C. rule is a positive step in recognizing the realities of today’s multijurisdictional practices.

Similarly, the Supreme Court of Florida has indicated that non-Florida attorneys may give legal advice to Florida clients regarding federal administrative agency practice if the attorney is “in Florida on a transitory basis” and tells the client in writing that the attorney is not a member of the Florida Bar. The Florida Bar v. Savitt, 363 So. 2d 559, 561 (Fla. 1978). This concept of a “transitory practice exception” would allow transactional attorneys, as well as attorneys practicing solely in front of administrative panels, to represent clients in other jurisdictions without facing UPL sanctions. Requiring that the client be notified of the attorney’s lack of bar membership in that jurisdiction will sufficiently protect the client’s rights as contemplated by these UPL statutes. However, until such an exception is universally adopted via statute or case development, attorneys still face possible UPL sanctions by rendering these types of services.

3. Exceptions for In-House Counsel
   One final area of concern deals with the unauthorized practice of law by in-house counsel. In-house counsel of national companies are often asked to travel to offices in different states to give legal advice, provide training, conduct investigations, and counsel executives in the company’s individual offices. Moreover, in-house counsel are often transferred between offices and choose not to become licensed in the new state. Whether physically present in another state, or simply advising other members of the corporation within those states, in-house counsel “practice law” on a daily basis for the corporation without obtaining licenses from every jurisdiction where their employer is located. As such, they are prime targets for UPL sanctions. Currently, few states have created statutory exceptions for the practices of in-house counsel. See, e.g., District of Columbia Rules of Court, Rule 49(b)(6); Fla. Stat. Ann. §§ 17-1.4(c); 17-1.3 (West 1994); Kan. Sup. Ct. R. 706; Ky. Sup. Ct. R. 2.11; Md. Bus. Occ. & Prof. Code Ann § 10-102 (Michie Supp. 1995); Minn. Sup. Ct. R. 6(D) (exception provides for a one-year grace period, after which the attorney must become licensed to practice in Minnesota); Mo. Sup. Ct. R. 8.105; Ohio Sup. Ct. R. VI §§ 4(A); 4(C); Okla. Stat. Ann. App. Tit. V, § 6 (West 1995); S.C. Sup. Ct. R. 405(3), (2), (3); Va. R. S. Ct. Pt. 6, § 1. These statutes generally except in-house counsel from the UPL statutes if the counsel is working for her employer corporation when she renders the legal services, and some require the counsel to gain pro hac vice admission if she will represent the corporation in a judicial proceeding. But, once again, if no statutory exception exists, in-house counsel are placing themselves at risk for a UPL violation each time they provide legal services to offices in states other than where the counsel is licensed.

4. Sanctions for Committing UPL
   There are four common sanctions for violating a UPL statute: (1) denial of payment of fees, (2) criminal misdemeanor charges, (3) contempt or injunctive relief, and (4) disciplinary action, such as disbarment. As seen in Birbrower, the most common of these sanctions, and possibly
the most damaging to a law firm, is the denial of fees charged for work done in violation of the UPL statute. However, individual attorneys should be aware that engaging in the unauthorized practice of law can lead to severe personal consequences as well. (For a list of possible sanctions in various U.S. jurisdictions, see Appendix A). The severe nature of possible sanctions, combined with the vague nature of many of these UPL statutes and the prevalent violation of them, illustrates the dire need for change in this area of law. The American Bar Association is currently working to place that process at the forefront of the states’ legislative agendas.

III. PROPOSED MODEL RULES ADDRESSING UPL IN A MULTIJURISDICTIONAL AGE

The American Bar Association has taken steps to address these issues by establishing the ABA Commission of Multijurisdictional Practice. Similarly, the Restatement Third of the Law Governing Lawyers addresses the jurisdictional scope of the practice of law.

A. ABA Commission on Multijurisdictional Practice


On November 30, 2001, the ABA Commission on Multijurisdictional Practice released a preliminary report recommending that the ABA relax the definition of the unauthorized practice of law in the Model Rules of Professional Conduct. Specifically, the Commission suggested changes to Model Rules 5.5 and 8.5 that would allow out-of-state lawyers to temporarily practice law in a state where they are not licensed if the representation does not create an “unreasonable risk” to the client, the public, or the courts. Interim Report at 4. The report and its proposed rules are open for comment until Friday, March 15, 2002. The Commission hopes to present a Final Report and Recommendation for consideration by the ABA House of Delegates at the August 2002 Annual Meeting in Washington D.C.

The Commission found that the Bar agrees on two propositions relating to UPL: (1) that “multijurisdictional practice of law is a practical reality derived from the merging needs of clients and a necessary and appropriate practice; and (2) existing UPL laws as written inhibit lawyers from rendering legal services in a manner that best serves the public.” Interim Report, at 12. Moreover, the Commission found that commentators only differed on what degree of revision was necessary to address these concerns. Id. After hearing testimony, researching current law, and analyzing written submissions, the Commission issued eight recommendations, including proposed drafts of Rules 5.5 and 8.5. The following is a summary of the recommendations relevant to the issues addressed in this paper. The paper will not discuss the Commission’s recommendations regarding the practice of law in the United States by attorneys licensed in other countries.

1. State judicial licensing and regulation of lawyers should be continued.

The Commission’s first recommendation answered what the Commission called “the most fundamental question” for the Commission – whether national-licensing regulations should be implemented. Interim Report at 18. The Commission recommended that “[t]he ABA should affirm its support for the principle of state judicial licensing and regulation of lawyers.” Id. Although the Commission agreed that the ABA
should take steps to revise its model rules, it reiterated the importance of state regulation of lawyers and rejected a national licensing scheme. *Id.* at 18-20. Instead, the Commission recommended that efforts should be made to determine areas of practice that should be permitted through something comparable to *pro hac vice* representation. *Id.* at 20. The Commission’s other recommendations seek to design such programs.

2. **As a general rule, attorneys licensed in another United States jurisdiction should not be guilty of UPL by rendering legal services on a temporary basis in another jurisdiction.**

The Commission’s second recommendation asserts that attorneys should be allowed to temporarily practice in other jurisdictions if doing so does not pose an “unreasonable risk” to the attorney’s client, the public, or the courts. (*Interim Report* at 4) Specifically, the Commission recommended that “[t]he ABA should amend Rule 5.5(b) of the Model Rules of Professional Conduct (Unauthorized Practice of Law) to provide that, as a general rule, it is not the unauthorized practice of law for a lawyer admitted in another United States jurisdiction to render legal services on a temporary basis in a jurisdiction in which the lawyer is not admitted if the lawyer’s services do not create an unreasonable risk to the interests of a lawyer’s client, the public or the courts.” *Id.* at 21. The Commission also proposed revising Rule 5.5 to include the “safe harbor” provisions outlined below.

3. **Safe harbors for out-of-state attorneys**

The Commission recommended that the ABA adopt proposed rule 5.5(c), which identifies “safe harbors” that would specifically apply the general principle annunciated in Rule 5.5(b). Under Proposed Rule 5.5(c), the following situations would not constitute the unauthorized practice of law:

- Work as co-counsel with a lawyer admitted to practice law in the jurisdiction;
- Providing services that a non-lawyer is legally permitted to render in the jurisdiction;
- Representing clients in, or ancillary to, an alternative dispute resolution setting, such as arbitration or mediation;
- Providing non-litigation work ancillary to the lawyer’s representation of a client in the lawyer’s “home state” or ancillary to the lawyer’s work on a matter that is in the lawyer’s home state; and
- Providing services that involve primarily federal law, international law, the law of a foreign jurisdiction, or the law of a lawyer’s home state.

*Interim Report* at page 22.

Proposed Rule 5.5(c) addresses many of the concerns discussed *infra* by allowing attorneys to legally serve client’s across state lines on a temporary basis, both in transactional work and in litigation, and will also allow attorneys the same degree of freedom to represent their clients in alternative dispute resolution proceedings without fearing UPL repercussions.

4. **Safe harbors for in-house counsel**

The Commission also recognized the need for rules allowing in-house counsel to “practice” in states other than their state of licensure when the work is for their corporate employer. To facilitate meeting the needs of in-house counsel, the Commission recommended the following “safe harbors” for in-house counsel:

Rule 5.5(d) states that a lawyer admitted to practice in another state does not engage in the unauthorized practice of law if:

- The lawyer is an employee of a client and acts on behalf of the client or its commonly owned organizational affiliates except for work for which *pro hac vice* is required; or
- When the lawyer renders services in the jurisdiction pursuant to federal law to the law or court rule of this jurisdiction.

Under Rule 5.5(d) an in-house counsel can continue her normal activities despite being transferred to a new state or being sent to an out-
of-state office to conduct an investigation, complete research, counsel management, or attend an arbitration. In addition, this rule acknowledges that in-house counsel must also abide by local pro hac vice rules when necessary. The proposed rule recognizes the importance of allowing in-house counsel to do their jobs no matter what locale they are in. This balances the needs of the client to maintain continuity of in-house representation while still protecting the integrity of the court system.

5. Adoption of a model “admission on motion” rule.

The Commission also recommended that the ABA adopt a model “admission on motion” rule, addresses the needs of experienced attorneys seeking admission to an out-of-state Bar after being licensed in another state for a significant period of time. Under the proposed rule, an attorney can be admitted to practice upon motion if the attorney has primarily engaged in the active practice of law for five of the seven years before seeking admission in the new jurisdiction, and can submit evidence of a passing Multistate Bar Examination score, as well as evidence the attorney is a member in good standing in all jurisdictions where admitted, and possesses the character and fitness to practice law in the new jurisdiction Interim Report at 30, and Appendix K. This rule would allow experienced attorneys to avoid the time and costs involved in preparing for and taking another bar examination before gaining admission to practice in another jurisdiction. The Commission noted that this procedure would not be a substitute for individual pro hac vice procedures. Id. at 31.

6. Adoption of a model state pro hac vice rule for practice before state courts and administrative agencies.

Similarly, the Commission recommended that the ABA adopt a model pro hac vice rule. Interim Report at 33. This would allow the states to uniformly enforce and administer pro hac vice admissions. The Commission hopes that a consistent rule throughout the U.S. would eliminate unduly restrictive admission provisions that hamper an attorney’s ability to serve his clients in different states. Id. The Commission also reiterated its support of the ABA’s position that the Federal Rules of Civil and Criminal Procedure should be amended to allow for more consistent federal pro hac vice requirements and recommended the ABA “renew its efforts to implement” its 1995 recommendation “[t]hat the American Bar Association supports efforts to lower barriers to practice before U.S. District Courts based on state bar membership by eliminating the state bar membership requirements in cases in U.S. District Courts. . . .” Id. The Commission also reiterated that restrictive pro hac vice requirements found in the federal rules inhibit competition and substantially increases the cost of litigation because attorneys are forced to associate with local counsel. Id.

7. Establishment of an ABA Coordinating Committee on Multijurisdictional Practice

Finally, the Commission recommended the ABA establish a Coordinating Committee to “monitor changes in law practice and the impact of regulatory reform, and to identify additional reform that may be needed.” Interim Report at 37.

While all of these recommendations adequately address the needs of attorneys involved in a multijurisdictional practice, if adopted they are only “model rules.” As such, there is no guarantee the states will follow suit and adopt the model rules or a substantial equivalent. However, the Commission’s report has been highly publicized and, if nothing else, has elevated this issue in the minds of practitioners and legislators across the country.

B. Restatement (Third) of the Law Governing Lawyers

Section Three of the Restatement Third of the Law Governing Lawyers also addresses the plight of the multijurisdictional attorney. That section states:

§ 3 Jurisdictional Scope of the Practice of Law By A Lawyer: A lawyer currently admitted to practice in a jurisdiction may provide legal services to a client:

(1) at any place within the admitting jurisdiction;

(2) before any tribunal or administrative agency of another jurisdiction or the federal government in compliance with
requirements for temporary or regular admission to practice before that tribunal or agency; and
(3) at a place within a jurisdiction in which the lawyer is not admitted to the extent that the lawyer’s activities arise out of or are otherwise reasonably related to the lawyer’s practice under Subsection (1) or (2).

Although section three is an obvious attempt to allow attorneys to practice in jurisdictions where they are not licensed, it is also extremely ambiguous. This ambiguity would require greater than average interpretations by the courts, which will most certainly lead to different standards of application across the U.S. However, section three of the Restatement Third of the Law Governing Lawyers does illustrate the need for statutory allowances for the interstate practice of law.

IV. Texas Law
In Texas, the unauthorized practice of law, and the regulation of it, is governed by Chapters 81 and 83 of the Government Code, as well as case law and rules promulgated by the Texas Supreme Court. The Unauthorized Practice of Law Committee, composed of nine persons appointed by the Supreme Court, is charged with informing the Texas Supreme Court and the State Bar regarding the unauthorized practice of law by lay persons and lay agencies and any participation by attorneys in that unauthorized practice of law, for developing methods for preventing the unauthorized practice of law, and for taking appropriate action for eliminating the unauthorized practice of law, including filing lawsuits in the name of the Committee. TEX. GOV’T CODE §§ 81.103, 81.104 (Vernon 1998).

A person may not practice law in Texas unless she is a member of the State Bar of Texas or meets the requirements of Supreme Court rules allowing for limited practice by attorneys licensed in another jurisdiction. TEX. GOV’T CODE § 81.102 (Vernon 1998). For example, Rule XV of the Rules Governing Admission to the Bar of Texas (adopted by the Supreme Court of Texas, amended September 1, 1985) sets out this state’s pro hac vice rule and reads as follows:

(a) A reputable non-resident attorney, although not licensed to practice law in Texas, may, after first complying with the requirements hereinafter set forth, participate in the trial or hearing of any particular cause in this State, provided a resident practicing attorney of this State, a member of the State Bar of Texas, is actually employed and associated and personally participates with such nonresident attorney in such trial or hearing. If such admission is sought to any court of this State by a non-resident attorney, applicant shall first file with the court wherein said attorney seeks admission a written sworn motion requesting admission.

Texas defines the “practice of law” as:

the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined. TEX. GOV’T CODE § 81.101(a) (Vernon Supp. 2002).

The practice of law in Texas embraces all advice to clients and all action taken for them in connection with the law. Crain v. Unauthorized Practice of Law Committee, 11 S.W.3d 328 (Tex. App.--Houston [1st] 1999, pet. denied). Like other UPL laws, the purpose behind these laws in Texas is to protect the public from individuals who are unskilled, inexperienced, and uneducated in legal matters and attempting to practice law in Texas. Brown v. Unauthorized Practice of Law Committee, 742 S.W.2d 34, 41-42 (Tex. App.--Dallas 1987, writ denied).

The Texas UPL statutes and pro hac vice rules are quite explicit in their definitions and requirements. The explicit nature of these provisions has allowed the courts to easily delineate whether someone has engaged in the unauthorized practice of law. Although there are no published cases dealing with an out-of-state
attorney’s alleged unauthorized practice of law in Texas, the courts have even-handedly applied the section 81.101 definition of the “practice of law” to activities of lay people in the state. For example, when a lay person gives legal advice, holds himself as a lawyer, or drafts or files any type of legal document the court’s unanimously hold that the law person has engaged in the unauthorized practice of law. E.g., Palmer v. Unauthorized Practice Committee, 438 S.W.2d 374, 377 (Tex. Civ. App.—Houston[14th] 1969, no writ) (holding that layman’s sale of will forms was prohibited by statute); Davies v. Unauthorized Practice Committee, 431 S.W.2d 590, 594 (Tex. Civ. App. —Tyler 1968, writ ref’d n.r.e.) (holding that layman committed unauthorized practice of law by giving legal advice on taxes, trusts, and formation of corporation, and prepared legal instruments); Quarles v. State Bar of Texas, 316 S.W.2d 797, 802 (Tex. Civ. App. –Houston 1958, no writ) (holding that layman engaged in the unauthorized practice of law by giving legal advice and information. The only exceptions occur when the law person is in an industry in which its professionals are allowed by law to perform certain tasks that fall under the definition of practicing law in Texas, such as insurance adjusters and real estate brokers. E.g., Unauthorized Practice of Law Committee v. Jansen, 816 S.W.2d 813, 816-17 (Tex. App.—Houston [14th] 1991, writ denied).

Although the UPL laws in Texas are not vague, there are still no statutory safe harbors for out-of-state attorneys involved in transactional work or alternative dispute resolution proceedings in Texas. Reform may become necessary if the courts begin strictly applying these rules to practitioners involved in non-litigation work in Texas. Similarly, the role of the Unauthorized Practice of Law Committee (“UPLC”) in prosecuting UPL violations should not be overlooked because the UPLC often decides singularly what types of practices it will litigate as UPL violations, and what practices it will let pass. For example, the UPLC has begun informing independent companies that they “may have engaged in activities which may constitute the unauthorized practice of law” by soliciting class members and helping them file claims as part of a 1998 nationwide settlement in Naef, et al. v. Masonite Corp. John Council, Identity Crisis: UPLC Alleges Companies May Violate Law By Helping Class Members File Claims, TEXAS LAWYER, January 2, 2002 (available at www5.law.com/tx/stories/edit1231_identity.shtml). The UPLC has obtained temporary restraining orders against two of the out-of-state companies. Id. Although some companies are fighting back, the Committee apparently strongly believes in its case and has shown no signs of backing down. Id. These actions are similar to the Committee’s highly publicized crack-down in 1998 against the sale and marketing of legal self-help books and software. Id.; see also V.A infra. Such actions indicate that practitioners can never be sure what practices will be next on the Committee’s list of UPL violations.

V. IMPACT OF TECHNOLOGY ON THE UPL DEBATE

A. Self-help Computer Programs and UPL

The Texas Legislature has recently addressed one of the problems associated with new technologies – the influx in recent years of self-help legal software programs. As noted in section II,A,1 supra, the Texas Legislature recently amended section 81.101 to exclude from the definition of the practice of law “the design, creation, publication, distribution, display, or sale” of written material, computer software “or similar products” designed to allow lay people to render their own legal services, such as drafting a will or contract, as long as the product “clearly and conspicuously state that the products are not a substitute for the advice of an attorney.” TEX. GOV’T CODE § 81.101(c) (Vernon Supp. 2002).

This legislation was passed shortly after Judge Barefoot Sanders’ decision in Unauthorized Practice of Law Committee v. Parsons Technology, Inc., No. Civ. A. 3:97CV-2859H, 1999 WL 47235 at *1 (N.D. Tex. Jan. 22, 1999), vacated by 179 F.3d 956 (5th Cir. 1999) (vacated in light of amendment to § 81.101). In Parsons Tech., Judge Sanders held that Parsons Technology engaged in the unauthorized practice of law by developing, publishing, and marketing Quicken Family Lawyer, a software program that offers the user over 100 legal forms, such as employment agreements, real estate leases, premarital agreements, and wills, and provides the user with instructions on how to fill out the forms.
Id. at *1. The software also allows the user to fill out a questionnaire that allows the software to indicate what form would be best suited for that particular user. Id. The software’s packaging also indicated that the software would “tailor[ing] documents to your situation.” Id. Applying Texas UPL law and previous cases that found that lay people violated the UPL laws by distributing legal forms and instructions for filling the forms out and/or preparing such forms, Judge Sanders held that Parsons had violated the Texas unauthorized practice of law statute by developing and marketing this software. Id. at *4-7. Specifically, Judge Sanders held that the interactive qualities of the software, combined with the promises of individual analysis on the software’s packaging materials, made the software “far more than a static form with instructions.” Id. at *7. This decision was vacated by the Fifth Circuit in light of the Texas Legislature’s subsequent amendment to section 81.101 of the government code, which specifically excludes these types of software programs from the definition of practicing law in Texas. Unauthorized Practice of Law Committee v. Parson Tech., Inc., 179 F.3d 956 (5th Cir. 1999); TEX. GOV’T CODE § 81.101(c) (Vernon Supp. 2002).

B. E-mail and Law Firm Websites

Another area that will undoubtedly surface in this debate is the effect of email communications and law firm websites. As discussed above, attorneys can virtually enter a state, and, thus, practice law in that state, by faxing or emailing information to a client in that state. Today clients and potential clients can easily seek legal advice via email. Once an attorney responds to such an email, one can argue that an attorney-client relationship has developed. Moreover, some states may view the email as the rendition of legal services under their UPL statutes, thereby making the attorney susceptible to UPL sanctions. Similarly, websites that offer any type of legal advice, such as a service allowing a visitor to the site to submit a legal question via email or into a site search engine, can render the firm, the website’s webmaster, and individual attorneys in the firm subject to UPL sanctions if out-of-state visitors solicit “advice” through the website. Although these scenarios have not yet been the subject of published litigation, it is just a matter of time before such situations surface. As technology continues to rapidly change and improve, the state UPL statutes will become more and more outdated if not reformed to account for these types of emerging technologies.

VI. CONCLUSION

Although rarely litigated, all practitioners should be aware that state UPL statutes widely differ and are mostly vague and outdated. As such, a UPL sanction could be lurking where you least expect. To meet the needs of an increasingly multijurisdictional legal landscape, and to keep up with merging technologies, states must update their UPL statutes to account for legitimate interstate legal practice. The ABA Commission’s proposed rules address these issues well, but there is no guarantee the states will adopt them. So, until they do, practitioners should remain attune to the possibility that their work may ultimately be considered the unauthorized practice of law in some jurisdictions.
APPENDIX A

State Statutes and Court Rules Regarding the Unauthorized Practice of Law

KEY:

- Detailed definition – Indicates whether the statute contains a detailed definition of the “practice of law” or the “unauthorized practice of law.”
- In-House Counsel Exception – Indicates whether the state has a statutory exception for in-house counsel.
- Transitory Practice Exception – Indicates whether the state has a statutory exception for out-of-state attorneys practicing in the jurisdiction on a transitory, occasional, or incidental basis.
- Other exceptions – Indicates whether the state has other statutory exceptions.
- Penalty – Indicates the possible statutory penalties for engaging in the unauthorized practice of law. “N/A” indicates that there is no statutory penalty, although penalties are likely judicially mandated.

<table>
<thead>
<tr>
<th>State</th>
<th>Statute(s) / Rule(s)</th>
<th>Detailed definition?</th>
<th>In-House Counsel</th>
<th>Transitory Exception</th>
<th>Other Exceptions</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>AL</td>
<td>Ala. Code §§ 34-3-6, 34-3-7 (1975)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Misdemeanor</td>
</tr>
<tr>
<td>AK</td>
<td>Alaska Stat. §§ 08.08.210, 08.08.230 (Michie, WESTLAW through 2001 1st Special Session);</td>
<td>Yes, in Alaska Bar Rules</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Misdemeanor</td>
</tr>
<tr>
<td></td>
<td>Alaska Bar Rule 63</td>
<td>AZ</td>
<td>AR</td>
<td>CA</td>
<td>CO</td>
<td>CT</td>
</tr>
<tr>
<td>---</td>
<td>------------------</td>
<td>----</td>
<td>----</td>
<td>----</td>
<td>----</td>
<td>----</td>
</tr>
<tr>
<td></td>
<td></td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>AZ</td>
<td>Ariz. Rev. Stat., Sup. Ct. Rule 42; Rules of Prof. Conduct 5.5</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>CO</td>
<td>Colo. Rev. Stat. Ann § 12-5-101 (West 1996); Rules of Prof. Conduct 5.5</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>CT</td>
<td>Conn. Gen. Stat. Ann. § 51-88 (West, WESTLAW through 1/1/01)</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>DE</td>
<td>Rules of Prof. Conduct 5.5</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>DC</td>
<td>D.C. Rules of</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>State</td>
<td>Statutory/Council References</td>
<td>Judicial</td>
<td>Prosecution</td>
<td>Sanction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------</td>
<td>-----------------------------</td>
<td>----------</td>
<td>-------------</td>
<td>----------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>FL</td>
<td>Fla. Stat. Ann § 454.23 (West 2001); Fla. Stat. Ann. §§ 17, 17-1.4(c), 17-1.3 (West 1994); Fla. R. Jud. Admin. 2.060, 2.061; Fla. Bar Rules 1-8.2, 4-5.5, 10-2.1, 10-4.1</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Misdemeanor</td>
</tr>
<tr>
<td>ID</td>
<td>Idaho Code §§ 3-104, 3-401, 3-420 (Michie, WESTLAW through 2000 Cumulative Supp.), Rules of Court Rule 801; Rule of</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Contempt; Fine up to $500 and/or jail up to 6 months</td>
</tr>
<tr>
<td>State</td>
<td>Statutory References</td>
<td>Contempt</td>
<td>Misdemeanor</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------</td>
<td>----------------------</td>
<td>----------</td>
<td>-------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>IN</td>
<td>Ind. Code Ann. § 31-1-5-1 (West 1996); Ind. Code Ann § 33-21-2-1 (West, WESTLAW through 2001 1st Reg. Sess.); Admission &amp; Discipline Rule 24; Rule of Prof. Conduct 5.5</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Misdemeanor</td>
<td></td>
</tr>
<tr>
<td>IA</td>
<td>Iowa Court Rules 118A, 118A.3, 120.1; Code of Prof. Resp. Disciplinary Rule 3-101</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>KS</td>
<td>Rule of Prof. Conduct 5.5; Kan. Sup. Ct. R. 706</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>R. 2.11</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fine up to $1,000 and/or jail up to 2 years.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Class E crime</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Misdemeanor Fine up to $5,000 and/or jail up to 1 year</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MA</td>
<td>Mass. Gen. Laws Ann. Ch. 221, §§ 39, 41, 46A (West 1993); Sup. Jud. Ct. Rule 3:05; Rule of Prof. Conduct 5.5</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1st Offense: Fine up to $100 or jail up to 6 months; Subsequent offenses: Fine up to $500 or jail up to 1 year</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MI</td>
<td>Mich. Comp. Laws. Ann. §</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Contempt</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>Statute/s</td>
<td>Yes</td>
<td>Limited Exception</td>
<td>No</td>
<td>Yes</td>
<td>Penalty</td>
</tr>
<tr>
<td>-------</td>
<td>-----------</td>
<td>-----</td>
<td>------------------</td>
<td>----</td>
<td>-----</td>
<td>--------</td>
</tr>
<tr>
<td>MN</td>
<td>Minn. Stat. Ann. § 481.02 (West 2001); Minn. Sup. Ct. R. 6(D)</td>
<td>Yes</td>
<td>Yes – Limited exception for one year</td>
<td>No</td>
<td>Yes</td>
<td>Misdemeanor Contempt</td>
</tr>
<tr>
<td>MS</td>
<td>Miss. Code Ann. §§ 73-3-55, 97-23-43 (1999)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Misdemeanor 1st offense: Fine of $100-200 and/or jail from 3-12 months 2nd offense: Fine of $200-500 or jail from 1-2 years; 3rd offense: Court’s discretion, up to a $5,000 fine or 5 years in jail.</td>
</tr>
<tr>
<td>MO</td>
<td>Mo. Ann. Stat. §484.010 (West 1987); Mo. Sup. Ct. Rules 5.29, 8.105, 9.01, 9.02, 9.03, 9.04; Rule of Prof. Conduct 5.5</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>N/A</td>
</tr>
<tr>
<td>MT</td>
<td>Mont. Code Ann.</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Contempt</td>
</tr>
<tr>
<td>State</td>
<td>Relevant Statutes and Rules</td>
<td>Allowed</td>
<td>Disciplinary Action</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------</td>
<td>-----------------------------</td>
<td>---------</td>
<td>---------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NE</td>
<td>Neb. Rev. Stat. 7-101, 7-101.01 (WESTLAW through 2000 Reg. Sess.)</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>N/A</td>
</tr>
<tr>
<td>NV</td>
<td>Nev. Sup.Ct. Rule 189</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>NJ</td>
<td>N.J. Stat. Ann. § 2C:21-22 (West, WESTLAW through L.2001, c.257); Rule of Prof. Conduct 5.5</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>NM</td>
<td>N.M. Stat. Ann. §§ 36-2-27, 36-2-28 (Michie,</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Contempt</td>
</tr>
<tr>
<td>State</td>
<td>Source</td>
<td>Misdemeanor Injunction</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------</td>
<td>------------------------------------------------------------------------</td>
<td>------------------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NY</td>
<td>N.Y. Judiciary Law §§ 476-a, 476-b, 478, 479, 484, 485 (McKinney 1983); Code of Prof. Resp., Discipl. Rule 3-101</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>OH</td>
<td>Ohio Rev. Code Ann. § 4705.01 (West, WESTLAW through 124th GA, Files 1 to 47, apv. 7/27/01); Gov. Bar. R. 7; Ohio Sup. Ct.</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>Statutory Reference</td>
<td>Criminal Liability</td>
<td>Injunction Available</td>
<td>Punishment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------</td>
<td>---------------------</td>
<td>---------------------</td>
<td>----------------------</td>
<td>------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PA</td>
<td>Pa. Stat. Ann. Tit. 42, §§ 2524, 2525 (WESTLAW through Act 2001-83); Rule of Prof. Conduct 5.5</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SD</td>
<td>S.D. Codified Laws §§ 16-16-1, 16-18-1, 16-18-2 (Michie, WESTLAW through 2001 76th Legislative Assembly), Rule of</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Punishment: Misdemeanor Injunction, Fine up to $5,000 and/or jail up to 5 years.
<table>
<thead>
<tr>
<th>State</th>
<th>Code</th>
<th>Yes</th>
<th>No</th>
<th>Treble Damages</th>
</tr>
</thead>
<tbody>
<tr>
<td>TN</td>
<td>§§ 23-1-108, 23-3-101, 23-3-103 (WESTLAW through 2001 Leg. Sess)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>TX</td>
<td>§§ 81.101, 81.102, 81.103, 81.104 (Vernon 1998)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>UT</td>
<td>Rule of Prof. Conduct 5.5</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>VT</td>
<td>Rule of Prof. Conduct 5.5; Code of Prof. Resp., Discipl. Rule 3-101</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>VA</td>
<td>Va. R. S. Ct. Pt. 6, § 1; Unauthorized Practice Rule 9</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>WA</td>
<td>§§ 2.48.170, 2.48.180 (West 1988)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>WV</td>
<td>W.Va. Code Ann. § 29C-7-201 (1966); Rule of Prof Conduct 5.5</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>WI</td>
<td>§757.30 (West 2001)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>WY</td>
<td>Wyo. Stat. Ann. § 33-5-117 (Michie 1977); Rule of Prof. Conduct 5.5; Rule of Ct. 302</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>