

American Bar Association Study of Multistate Practice Is on Fast Track

by Harriet E. Miers

WHEN IS THE last time you took or defended a deposition in another state? Have you ever traveled to another state to consult with and advise someone who works for a subsidiary of your client? How often have you called out of state to negotiate on behalf of a client?

When you did any of these things, were you thinking about the unauthorized practice of law (UPL)? Probably not. Were you committing UPL? Some would say a resounding and concerned "Yes." At least in some states. Which states? It's hard to know.

Traditionally, lawyers in the United States may practice law only in the states in which they are licensed, a restriction typically backed up by UPL provisions that may be enforced by fee forfeiture, disqualification, professional discipline and, in some jurisdictions, criminal conviction.

A state's UPL restrictions are meant to protect its residents by ensuring that lawyers who represent them in the state are familiar with state law, procedures and ethics rules and are subject to state disciplinary regulation. Many lawyers believe that evolving legal needs, technology and communications, and law practice make the old restrictions outmoded.

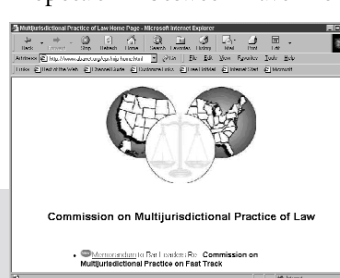
In August 2000, ABA President Martha Barnett appointed an 11-member Commission on Multijurisdictional Practice, which I chair, to examine and make recommendations on these issues. The Commission expects to issue a preliminary draft report in March 2001 and by May to have completed a report with recommendations for consideration by the American Bar Association House of Delegates in August.

This is a very fast track, and we know it. But there is no time to waste. State legislatures are acting; other organizations, both public and private, are acting; and cases against lawyers involved in this conduct are going forward. A national telephone seminar was sponsored by the Attorneys' Liability Assurance Society in December 1999 to discuss unauthorized practice and multijurisdictional practice issues that could affect its member law firms; that seminar attracted nearly 1,500 participants. The issue is ripe.

The Commission is committed to undertaking an objective and comprehensive national study. To do so, it needs the participation of state and local bar associations, ABA entities, individual lawyers, clients and other interested parties across the country. If you are a practicing lawyer or a client or otherwise have views to offer, the Commission would like to learn about your experience. It is important for the Commission to learn whether and to what

extent lawyers are practicing across state lines and whether lawyers believe there are preferable alternatives to existing restrictions on such practice.

So far, proposed alternatives that arose out of a March 2000 symposium at Fordham Law School range from doing nothing—to maintaining the status quo—to licensing lawyers nationally. Proposals in between have included developing uniform state



A report on the multi-state practice symposium held at Fordham

Law School, together with other writings on the subject, may be found on the Commission's Web site: www.abanet.org/cpr/mjp-home.html

laws setting forth narrower and clearer restrictions on out-of-state practice, making it possible for out-of-state lawyers to receive permission to render a broader array of legal services in a particular state and allowing more liberal admission of out-of-

state lawyers for general purposes.

Are there really problems? If so, what are they?

Is multistate law practice increasingly common?

Is multistate practice necessary if lawyers are to serve their clients effectively and efficiently?

Should steps be taken with respect to practicing "Internet law" or "telephone law"? If so, how (if at all) should the laws and ethical rules be reformed to better accommodate such practices?

The Commission will be holding public hearings around the country prior to March, including those at the February ABA Midyear Meeting in San Diego and others in Atlanta, Chicago, Dallas and New York. You are invited to attend one of the hearings and to provide us with written testimony (visit us online for details as they develop). We hope we will hear from you as we undertake this important work. ☞

MAKING AN IMPACT

- **To testify, contact John A. Holtaway of the ABA Center for Professional Responsibility at (312) 988-5298 or jholtaway@staff.abanet.org, or write to him at the Center, 541 North Fairbanks Court, 14th Floor, Chicago, IL 60611.**
- **To subscribe to a listerv to keep up-to-date on the issue, send an e-mail message to jholtaway@staff.abanet.org.**
- **Contact any member of the Commission through the Web: www.abanet.org/cpr/mjp-home.html**

Harriet E. Miers is the Chair of the American Bar Association Commission on Multijurisdictional Practice. She is a past president of the State Bar of Texas.