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PROFESSIONAL RESPONSIBILITY

New rules modify unauthorized practice of law rules in California

By Peter Weber

The new Rule 5.5 modifies former Rule of Professional Conduct 1-300, titled “Unauthorized Practice of Law.” The Supreme Court has changed the title and added some language. Former Rule 1-300 is now known as: “Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law”.

Adding “multijurisdictional” brings Rule 5.5 in line with the same numbered rule in the Model ABA Rules of Professional Conduct. The change was necessary because former Rule 1-300 did not contain any guidance for the multijurisdictional practitioner. The omission from the rules was odd since the California statutes, State Bar of California and the Judicial Council enacted rules to govern multijurisdictional practice. *See* Bus. & Prof. Code Section 6125 et seq., State Bar of California’s Multijurisdictional Practice Program and the California Rules of Court, Title 9, Division 4.

Former Rule 1-300 was relatively straightforward: A member may practice law only in a jurisdiction in which the lawyer is authorized to practice and should not aid any person or entity from the unauthorized practice of law. Rule 5.5 encompasses the spirit and intent of

Rule 1-300 but also adds the multijurisdictional element. Paragraph (b)(1) of Rule 5.5 prohibits lawyers from practicing law in California unless otherwise entitled to practice law in this state by court rule or other law. Paragraph (b) (2) of Rule 5.5 prohibits a lawyer who is not admitted in California from holding out or otherwise representing that the lawyer is admitted in California. Falsely advertising a lawyer’s admission is addressed in Rule 1-400 but that rule arguably only applies to members of the State Bar of California. Former Rule 1-400 will now be broken up into Rule 7.1-7.5.

The new rule prevents non-admitted lawyers from establishing or maintaining a resident office or other systematic or continuous presence in California for the practice of law. The goal is to prevent a non-admitted lawyer from wrongfully expanding any temporary permission to practice in California and to prevent public deception. The simplest way to distill Rule 5.5 is the following scenario. A lawyer licensed to practice law in Nevada could not establish an office or regular presence in California to practice Nevada law. Similarly, a non-admitted lawyer that obtains permission to litigate on a pro hac vice cannot hold themselves out the public as being admitted to practice law

in California beyond the litigation.

For the California lawyer, Rule 5.5 will not be frequently consulted. The new rule is seemingly aimed at that class of non-admitted lawyers who are permitted to practice law pursuant to California Rules of Court 9.40-9.48, which includes counsel pro hac vice, appearances by military counsel, certified law students, out-of-state attorney arbitration counsel, registered foreign legal consultants, registered legal services attorneys, registered inhouse counsel, attorneys practicing law temporarily in California as part of litigation and nonlitigating attorneys temporarily in California to provide legal services. For anyone in the above class of persons, Rule 5.5 is squarely within their purview.

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