

UPL, MDP AND MJP (DEFINING WHAT LAWYERS DO AND WHERE THEY CAN DO IT): PART II

Hypotheticals

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Hypothetical 1

You are interviewing for a law school professorship, and over lunch you and a current professor start discussing governmental power to regulate the legal profession. The professor claims that the federal government has the ultimate power to regulate the legal profession, because more than any other profession lawyers affect interstate commerce. You don't know whether to politely agree with the professor, or push back against what might be a deliberately incorrect view.

Does the federal government have the ultimate power to regulate the legal profession?

- (A) YES
- (B) NO

Hypothetical 2

All of your law firm's lawyers are licensed in just one state, in which your one office is located. However, your lawyers occasionally travel to other states on a temporary basis to serve clients located in those other states (but with connections to your lawyers' home state). You wonder about the risk of being sued for malpractice in those other states.

May your firm be sued in states where your lawyers have temporarily provided legal services?

- (A) YES
- (B) NO

Hypothetical 3

You just received an urgent call from one of your partners. She realized a few minutes ago that the statute of limitations is about to expire on a claim that her brother wants to bring against a trucking company in a neighboring state (just across the river from your office). Neither your partner nor any of your small boutique law firm's other lawyers is licensed in the other state. The courts close in about 45 minutes there, and your partner wants to know what she can do. She tells you that she can prepare a bare-bones complaint and file it in the courthouse across the river in about 40 minutes.

Will the neighboring state's court consider valid a complaint signed and filed by your partner, even though she is not licensed there?

(A) YES

(B) NO

Hypothetical 4

You should have followed your initial instinct before beginning to represent an estate planning client -- she has been nothing but trouble since you began to work with her. The final straw came yesterday, when she told you that she would not pay your bill, because you are not licensed in the state where she lives.

Will you be able collect your bill for estate planning work you have performed for a client, who lives in a state where you are not licensed?

(A) YES

(B) NO

Hypothetical 5

One of your clients conducts operations in ten Midwestern states. Your client's general counsel just asked you to analyze the franchise laws in all ten of the states in which it has operations. You quickly check your firm's roster, and realize that you have lawyers licensed in some of those states, but not all of them.

- (a)** May you provide advice about the law of a state in which one of your lawyers is licensed -- although that lawyer knows nothing about franchise law, and will not be involved in analyzing that state's law?

 - (A)** YES
 - (B)** NO

- (b)** May you provide advice about the law of a state in which none of your lawyers is licensed?

 - (A)** YES
 - (B)** NO

Hypothetical 6

You have practiced for a number of years in Pennsylvania (where you are licensed), and primarily handle trust and estate matters. With the recent economic downturn, you have tried to expand your client base. Thanks to your good reputation and "word of mouth" from satisfied clients, you have begun to attract a number of clients who live in Delaware -- where you are not licensed. You communicate electronically and by telephone with these clients, and carefully avoid traveling into Delaware to meet with any of the clients.

May you continue to represent Delaware trust and estate clients as long as you avoid spending any time in Delaware providing those services?

(A) YES

(B) NO

Hypothetical 7

Your largest corporate client wants you to try an employment discrimination case recently filed against it in a neighboring state's court. You are not admitted to practice in that state.

Will you be able to represent your corporate client in the employment discrimination case?

- (A) YES
- (B) NO

Hypothetical 8

You are exploring the possibility of representing your client in a lawsuit against one of its business competitors -- which you would plan to file in a neighboring state where you are not licensed. To prepare for the lawsuit, you need to interview several witnesses who live in that neighboring state. Based on the results of your interviews, your client might ask you to represent several of those witnesses, many of whom formerly worked for your client.

- (a) In connection with pending or potential litigation, may you interview witnesses in a state in which you are not licensed to practice law?
- (A) YES
- (B) NO
- (b) In connection with pending or potential litigation, may you represent witnesses who live in states where you are not licensed to practice law?
- (A) YES
- (B) NO
- (c) May you represent a client based in that other state in trying to resolve the dispute – so long as you retain local counsel if litigation ensues?
- (A) YES
- (B) NO

Hypothetical 9

You represent your corporate client in several cases pending in your home state. Among other things, you need to schedule several depositions of witnesses who are living or working in several other states around the country. You are not admitted in any of those states.

May you take the deposition of witnesses in those other states -- where you are not admitted to practice law?

(A) YES

(B) NO

Hypothetical 10

You frequently represent doctors whose privileges have been terminated by hospitals. You just received a call from a doctor in Wisconsin who wants you to represent her in a termination process instituted and supervised by the hospital which just terminated her privileges. The hospital's lawyer called you a few hours later to say that he will object to your appearing on behalf of the doctor in the hospital process -- because you are not admitted to practice in Wisconsin.

May you represent the doctor in the Wisconsin hospital hearing?

- (A) YES
- (B) NO

Hypothetical 11

Over the years, you have shifted from being a trial lawyer to primarily representing your clients in employment law arbitrations. One of your clients just asked if you could represent it in an arbitration scheduled to take place in a state where you are not licensed.

May you represent a client in an arbitration taking place in a state where you are not licensed?

(A) YES

(B) NO

Hypothetical 12

Your client has asked you to handle a complex transaction with a company in a neighboring state -- where you are not licensed. You expect to spend as much as 18 months at the other company's headquarters negotiating and consummating the transaction.

May you spend 18 months working on a transaction in another state where you are not licensed?

- (A) YES
- (B) NO

Hypothetical 13

You graduated from Vanderbilt Law School, and formerly served as Dean of Student Life at Georgia State University. Along with your partner (a University of Georgia Law School graduate and former regional counsel of the U.S. Department of Energy) you were retained by a North Carolina college to conduct an internal investigation into the college's president. The president was accused of manipulating a basketball player's grade point average so that the student could continue to play basketball. You are a member of the Tennessee and Georgia Bars, and your partner is a member of the Georgia Bar. Neither of you are members of the North Carolina Bar. As part of your investigation, you conducted interviews in North Carolina and provided your report to the North Carolina college's Board of Trustees.

Have you engaged in the improper multijurisdictional practice of law in North Carolina?

- (A) YES
- (B) NO

Hypothetical 14

You have practiced environmental law in Colorado for approximately twenty years. About five months ago, you received a call from your in-laws, who live in Minnesota. Their condo association had a judgment entered against them for a little over \$2,000, which they think was unfair. They asked you whether you could try to resolve their dispute with their condo association. You have exchanged approximately two dozen emails with the condo association's lawyer. You were shocked to learn that the Minnesota lawyer just filed a bar complaint in Minnesota, alleging that your email exchanges amounted to the "practice of law" in Minnesota, and that you have engaged in the illegal unauthorized practice of law in Minnesota.

Have you engaged in the illegal unauthorized practice of law in Minnesota?

- (A) YES
- (B) NO

Hypothetical 15

You handle the trust and estate work for several wealthy individuals who spend summers in your state but winters in Florida (where you are not licensed). Several multijurisdictional questions have arisen in connection with your practice.

- (a) May you travel to Florida in February and meet with one of your clients to go over her estate plan?
- (A) YES
- (B) NO
- (b) May you represent your client's neighbor in preparing her estate plan (she lives permanently in Florida, but heard favorable reports about you from your client who lives next door)?
- (A) YES
- (B) NO

Hypothetical 16

You have gained a national reputation for representing aircraft part vendors in complying with very specific (and complex) UCC regulations. You just received a call from a small vendor which would like to hire you to help with such UCC issues. The vendor is located in a state where you are not licensed to practice law.

May you represent the vendor, although you are not licensed to practice law in that state?

(A) YES

(B) NO

Hypothetical 17

Your landlord just terminated your lease, so you are looking for new office space. You have always lived near the border of two states, and are used to crossing the border on a nearly daily basis as you shop, try new restaurants, etc. You are licensed only in the state where you live -- focusing your practice on elder-law issues. You just read about a small office that would be perfect for your practice. It is actually closer to your home than your current office, and just a few minutes away from a large retirement community. However, the office is in the neighboring state, where you are not licensed to practice law.

(a) May you continuously practice in the neighboring state, as long as you very carefully explain in all of your marketing materials and to your clients that you are not licensed there?

(A) YES

(B) NO

(b) May you continuously practice in the neighboring state, as long as you follow the step discussed above, and also work under the direct supervision of a partner who is licensed in that neighboring state?

(A) YES

(B) NO

Hypothetical 18

Your elderly father lives in Utah. You are considering whether you can move from Los Angeles (where you practice in a medium-sized firm) to Utah, where you can take care of your dad. You would work remotely from Utah – not representing any clients in that state, or practicing Utah law. In essence, you would be “invisible” in Utah, and continue your normal practice.

May you continuously practice in Utah under these conditions?

(A) YES

(B) NO

Hypothetical 19

You have practiced law for several years in the city where you and your wife met while attending college. She just obtained her master's degree, and earned a spot in a very prestigious Ph.D. program at a university in a neighboring state (where you are not licensed). One of your best friends from law school works at a large firm located within blocks of where your wife will be earning her doctorate, and has urged you to apply for a job there.

Will you be able to "waive in" to the neighboring state's bar?

- (A) YES
- (B) NO

Hypothetical 20

After your wife was admitted to a prestigious Ph.D. program in a neighboring state, you accepted a job offer at a firm near the university where your wife will be studying. Fortunately, you have been practicing for five years in your home state, so you are eligible to apply for admission by motion to the bar of the neighboring state. You started work this morning, and you want to make sure that you do not engage in any improper activities until you are a full member of your new state's bar.

- (a) Can you use business cards with your new firm's name and address?
- (A) YES
- (B) NO
- (b) Can you negotiate business transactions with opposing counsel on your own?
- (A) YES
- (B) NO
- (c) May you appear in your new state's courts?
- (A) YES
- (B) NO
- (d) Will you face a filing deadline for your application to be admitted by motion in your new state?
- (A) YES
- (B) NO
- (e) Once you are admitted by motion in the new state, will you have all the rights of lawyers who were admitted after taking the bar exam?
- (A) YES
- (B) NO

Hypothetical 21

You started practicing in Minnesota immediately after graduating from law school two years ago, but now have the opportunity to join a firm in another state. You are not able to waive into that state's bar, and for obvious reasons would like to avoid taking another bar exam. You decided from the beginning to limit your practice to trust and estate matters, usually involving federal tax issues. You wonder whether you can avoid taking the bar exam in your new state if you limit your practice even further -- working only on matters before the U.S. Tax Court in Washington, D.C.

May you continuously practice in a state if you limit your work to matters before a federal agency or specialized tribunal?

(A) YES

(B) NO

Hypothetical 22

You have only been practicing for a few years, but you want to move to another state (where you are not licensed) to be near the school where your young child will be enrolled. You hope to avoid taking the bar exam in that other state, and you are not yet eligible to be admitted by motion to the other state's bar. So far you have been primarily a federal court litigator, and you wonder whether you can move to the other state and practice only in federal court.

May you move to another state and continuously practice only in the federal court located there, without being licensed in that other state?

- (A) YES
- (B) NO

Hypothetical 23

After practicing for many years as a labor lawyer in a northeastern state, you want to move to a southern state to be near your aging parents. The thought of taking another bar exam frightens you, and you are not eligible to be admitted by motion to the bar of that southern state (because you recently have been serving as an in-house lawyer in a state where you are not fully licensed). You wonder whether you will be able to move to the southern state and practice a certain type of law, without obtaining a license there.

May you move to another state and practice "federal labor law" without a license in that state?

- (A) YES
- (B) NO

Hypothetical 24

You have practiced for about 35 years in a midwestern state, but have spent an increasing amount of time each winter in a southern state with a friendlier winter climate. You realize that you cannot simply "hang out a shingle" in the southern state, but you wonder if you can stay busy (and earn some money) during the winter months by working part time as a paralegal at a law firm around the corner from your condominium.

Without violating the southern state's unauthorized practice of law rules, may you act as a paralegal in that state?

- (A) YES
- (B) NO

Hypothetical 25

You have spent most of your legal career practicing in Minnesota as an in-house lawyer for a company headquartered in Minneapolis. You are nearing retirement age, and want to spend the last few years of your career in a warmer climate. Your client has major operations in several southern states.

May you move to a southern state where you are not licensed, and continuously practice law without joining that state's bar -- if you limit your practice to representing your corporate client/employer?

- (A) YES
- (B) NO

Hypothetical 26

When you moved to one of your Minnesota client/employer's divisions in a southern state to escape the cold weather, you registered with that state's bar rather than take the bar exam. Now you have a number of specific questions.

- (a) May you represent one of your client/employer's partially owned subsidiaries?
 - (A) YES
 - (B) NO

- (b) May you represent one of your client/employer's senior executives (helping him to negotiate a divorce decree) if you are not licensed in the state where you are practicing?
 - (A) YES
 - (B) NO

- (c) May you represent your client/employer in a state court hearing?
 - (A) YES
 - (B) NO

- (d) May you participate in your local bar's pro bono program?
 - (A) YES
 - (B) NO

- (e) If you decide to join your new home state's bar, may you count the time you spend in the southern state toward the required duration under that state's admission by motion rule?
 - (A) YES
 - (B) NO

Hypothetical 27

You have relatives in Ireland, and have always been particularly close with a cousin who became an Irish lawyer. After spending some time with you and your husband in sunny California, your cousin has been exploring the possibility of moving to America to practice law here.

- (a) May your Irish cousin lawyer move to the United States as an employee of an Irish company and provide guidance on Irish law to the Irish-based client?
- (A) YES
- (B) NO
- (b) May your Irish cousin lawyer move to the United States and open an office – limiting his practice to Irish law?
- (A) YES
- (B) NO
- (c) May your Irish cousin lawyer appear pro hac in United States courts?
- (A) YES
- (B) NO
- (d) May your Irish cousin lawyer take a state's bar exam with the hopes of continuously practicing in that state as a fully licensed lawyer?
- (A) YES
- (B) NO
- (e) May your Irish cousin lawyer join a state's bar through admission by motion?
- (A) YES
- (B) NO