

## MULTIJURISDICTIONAL PRACTICE IN THE U.S.: IN-HOUSE COUNSEL PRO BONO

Multijurisdictional practice rules pose a significant obstacle for many in-house attorneys participating in pro bono activities. Numerous in-house attorneys, though admitted and in good standing in one or more U.S. jurisdictions, are not licensed in the states in which they currently work. The practice rules in all but a few states permit in-house counsel licensed in other U.S. jurisdictions to represent their in-state employer, often through a registration or similar certification process, but many of these rules limit representation to the employer-client.<sup>1</sup> Some states provide pro bono exemptions, allowing non-locally licensed in-house counsel (“registered in-house counsel”)<sup>2</sup> to provide pro bono. However, a large number do not expressly permit these lawyers to practice in pro bono matters. And many of those jurisdictions that do subject registered in-house counsel to a number of restrictions, such as mandating that pro bono legal services be provided only in association with an approved organization or under the supervision of a locally licensed lawyer.

In recent years, a number of states have re-evaluated their rules and amended them to reduce or eliminate limitations on in-house pro bono service. More states are following suit. Currently, four jurisdictions have adopted provisions that eliminate restrictions and permit registered in-house counsel to engage in pro bono broadly while protecting clients and requiring lawyer competency – Illinois, New York, Virginia, and Wisconsin.

### **Growth of In-House Pro Bono**

Over the past decade, in-house pro bono has grown tremendously. Many of the Fortune 500 companies and a majority of the Fortune 100 companies have either set up or are moving to establish formal pro bono programs for the lawyers in their legal departments. In addition, lawyers in smaller companies and legal departments engage in pro bono legal services through opportunities organized by Corporate Pro Bono (CPBO), ACC chapters, legal service providers, bar associations, and other organizations.

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<sup>1</sup> In 2002, the American Bar Association (ABA) amended ABA Model Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law to authorize in-house counsel, licensed and in good standing in at least one U.S. jurisdiction, to practice for their employers without becoming admitted to the local bar and without registering or obtaining certification from the bar or court. Several jurisdictions have adopted the amended model rule. Most others have adopted rules that provide that non-locally licensed in-house counsel may work for their employer, but require them to register or obtain certification to do so. Only two jurisdictions provide no exemption for non-locally licensed in-house counsel.

<sup>2</sup> For simplicity, this paper refers to all non-locally licensed in-house attorneys who practice in a jurisdiction that has adopted Model Rule 5.5 or a similar practice rule as “registered in-house counsel.”

The pool of registered in-house counsel who may participate in pro bono numbers in the thousands. In the following select jurisdictions, registered in-house counsel authorized to work in state for their employer number:

- more than 250 in Arizona
- more than 1800 in California
- more than 800 in Connecticut
- more than 350 in Delaware
- more than 650 in Florida
- more than 500 in Illinois
- more than 350 in Massachusetts
- more than 650 in New York
- more than 350 in Pennsylvania
- more than 900 in Virginia

## **Actions to Change Practice Rules**

In recent years, there have been a number of efforts to encourage states to change their practice rules so that registered in-house counsel may engage in pro bono services more freely.

### State Practice Rules

In-house counsel in Virginia worked to amend Virginia's practice rules to allow non-locally licensed in-house counsel authorized to work for their employer to also provide pro bono services. In 2006, Virginia adopted a rule that allowed its registered in-house counsel to provide pro bono services but only in partnership with an approved organization and under the supervision of a Virginia licensed lawyer among other restrictions. These limitations made pro bono practice impractical for many registered in-house counsel and limited the amount of pro bono provided to those in need in Virginia.

In the spring of 2010, following an access to justice summit hosted by the Virginia Supreme Court, lawyers from the Virginia State Bar, Virginia Bar Association, and the Association of Corporate Counsel worked with CPBO to submit a proposed amendment to the practice rules that the Virginia Supreme Court passed in 2011. Now, registered in-house attorneys may provide pro bono broadly, subject to the Virginia Rules of Professional Conduct.<sup>3</sup>

Other states, including Connecticut, Florida, Iowa, Massachusetts, Minnesota, New Jersey, and Ohio, as well as the District of Columbia have made recent changes to their practice rules that allow for greater in-house pro bono involvement. However, unlike in Virginia, the rules in these jurisdictions impose several restrictions that narrow in-house pro bono engagement and limit the number of clients served.

In April 2013, Illinois, like Virginia, amended its existing registered in-house counsel provision to remove these types of restrictions and permit Illinois registered in-house counsel to provide pro bono broadly. In December 2013, New York adopted a similarly broad rule, and Wisconsin followed suit by removing unnecessary restrictions effective January 2017. Now, four states – Illinois, New York, Virginia, and Wisconsin – have practice rules that permit registered in-house

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<sup>3</sup> The broad pro bono rule applies to in-house counsel registered under Part I of Virginia Supreme Court Rule 1A:5; there is no similar provision for in-house counsel registered under Part II of this Rule.

counsel to provide pro bono legal services without unnecessary limitations and while protecting clients and requiring lawyer competency. These provisions serve as [models for other jurisdictions](#).

### Conference of Chief Justices

In July 2012, the Conference of Chief Justices (CCJ) passed Resolution 11 “[In Support of Practice Rules Enabling In-House Counsel to Provide Pro Bono Legal Services](#)” asking CCJ members to “consider promoting the expansion of pro bono legal services, including by amending the practice rules to allow non-locally licensed in-house counsel who are permitted to work for their employer to also provide pro bono legal services subject to the local rules of professional conduct.”

### **Current Status of In-House Pro Bono Exceptions and Rules**

Below is a jurisdiction-by-jurisdiction<sup>4</sup> chart of the multijurisdictional practice rules applicable to non-locally licensed in-house counsel providing pro bono with a brief description of the terms of the rule and a link to the actual provisions. In sum, the number of jurisdictions that currently:

- permit in-house counsel who are not locally licensed (“registered in-house counsel”) to work for their employer under an unauthorized practice of law exception: **49**;
- allow registered in-house counsel to engage in pro bono legal services broadly, subject to the local professional rules of conduct: **4**;
- allow registered in-house counsel to provide pro bono legal services, only if “associated with” or “affiliated with” approved legal services organizations **or** under the supervision of a locally licensed attorney: **4**;
- allow registered in-house counsel to provide pro bono legal services, only if “associated with” or “affiliated with” approved legal services organizations: **15**;
- allow registered in-house counsel to provide pro bono legal services, only if “associated with” or “affiliated with” approved legal services organizations **and** under the supervision of a locally licensed attorney: **5**;
- are silent with regard to registered in-house counsel providing pro bono legal services **but** allow out-of-state lawyers, including in-house counsel, to provide pro bono legal services subject to a number of restrictions, which may include “associated with” or “affiliated with” approved legal services organizations, under the supervision of a locally licensed lawyer, and other limitations: **12**; and
- are silent with regard to registered in-house counsel **and** out-of-state lawyers providing pro bono legal services: **11**.

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<sup>4</sup> This summary includes the fifty states and the District of Columbia. It does not include U.S. territories.

## Options That Do Not Require Local Bar Admission

### Out-of-State Attorney Provisions

A number of jurisdictions allow attorneys who are licensed out-of-state, including in-house counsel, to provide pro bono. Non-locally licensed in-house counsel in jurisdictions that do not expressly permit their pro bono participation may practice under these provisions. However, many of these rules impose more restrictions than those adopted specifically for in-house counsel, including being “associated with” or “affiliated with” approved legal services organizations and/or working under the supervision of a locally licensed attorney, as well as time limitations (as short as 18 months).

### Certain Pro Bono Matters

In-house counsel located in jurisdictions that do not expressly permit their involvement in pro bono may nonetheless be able to perform certain types of pro bono matters. These attorneys will need to focus on pro bono options that do not technically involve the practice of law, include practicing under the close supervision of an attorney licensed within the jurisdiction, or for which admission to the state bar is not otherwise required.

Some examples are:

- Dispute Resolution
- Intake and Screening
- Special Administrative Cases (including, but not limited to: Immigration, IRS, Medicaid, Military Discharge Upgrade, School Board Hearings, Social Security Benefits, Unemployment Insurance, Veterans’ Appeals, Welfare, Special Education)

Please note that while these general categories of work may not be considered the practice of law for the purpose of local bar rules, attorneys should consult the rules and counsel in the state in which they wish to do pro bono work. Some states consider the practice of law to include any and all work performed by a lawyer for a client, and thus, might not agree that this work does not require local admission. Also, be aware that under some policies, in order to qualify for the protections of malpractice insurance, an attorney must be in a lawyer-client relationship. In these circumstances, if a disgruntled recipient of services decides to sue the attorney, that attorney may not be able to argue that he/she was not practicing law for purposes of admission, but that he/she was for purposes of liability coverage.

*Pro hac vice* admission is also available to in-house attorneys interested in doing pro bono work on litigation matters, but is often a cumbersome and time consuming process.

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In an effort to share interests, ideas, and best practices learned from experiences like those in Virginia, and to create a broad-based approach to this obstacle, CPBO, a global partnership project of the Association of Corporate Counsel and Pro Bono Institute designed to support in-house pro bono in their efforts to do pro bono work, has formed a task force composed of in-house counsel from jurisdictions impacted by these restrictive rules. Legal departments and in-house lawyers interested in participating in or learning more about the task force should contact CPBO's Director at [cpbo@probonoinst.org](mailto:cpbo@probonoinst.org).

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## Summary of Multijurisdictional Practice Rules by State

State	In-House Registration/Certification Requirement	Rule on Registered In-House Counsel Pro Bono Practice	Rule on Out-of-State Attorneys Providing Pro bono	Pro Bono Provision <sup>5</sup>
Alabama	Yes	No	Limited Exception	Limited exception permits out-of-state attorneys to represent indigent defendants pro bono in capital cases or post-conviction proceedings.
Alaska	No*	No	No	N/A
Arizona	Yes	<a href="#">Ariz. Sup. Ct. R. 38(e)</a>	N/A <sup>6</sup>	Registered in-house counsel may be certified to volunteer to provide legal assistance after an authorized representative of the approved legal services organization files a notice with the clerk of the Supreme Court of Arizona. Must be admitted to practice in another jurisdiction for at least 5 years.
Arkansas	No*	No	<a href="#">Ark. Sup. Ct. Admin. Ord. 15.2</a>	Out-of-state attorneys may provide pro bono services to persons of limited means who have been referred to the attorney by an authorized legal aid organization. Representation shall be under the auspices of the authorized legal aid organization.
California	Yes	<a href="#">Cal. R. of Ct. 9.45</a>	N/A	Registered in-house counsel may provide pro bono services while working under the supervision of one qualifying legal services provider. Counsel must apply to be a registered legal aid lawyer. Practice is permissible for no more than three years.
Colorado	Yes	<a href="#">Colo. R. Governing Admission Prac. L. 204.1(4)</a>	N/A	Certified in-house counsel may provide pro bono legal services under the auspices of a court, a bar association or Access to Justice Committee-sponsored program, a legal services organization, or a law school, in accordance with Rule 6.1 of the Colorado Rules of Professional Conduct.
Connecticut	Yes	<a href="#">Conn. Prac. Book § 2-15A(c)(5)</a>	N/A	Registered in-house counsel may provide pro bono legal services offered under the auspices of organized legal aid societies, or state/local bar association projects, or provided under the supervision of a member of the Connecticut Bar who is also working on the pro bono representation.

<sup>5</sup> All jurisdictions with a pro bono provision require that the attorney must be qualified and in good standing in one or more U.S. jurisdictions; therefore, we have not repeated this requirement for each. Some rules include additional restrictions. See the text of the actual rules for complete information.

\* These states allow non-locally licensed in-house counsel to practice for their employer without registering, pursuant to the exception in the rule of professional conduct governing the unauthorized practice of law.

<sup>6</sup> Jurisdictions marked N/A may have a rule that permits out-of-state attorneys to provide pro bono services, in addition to a rule for registered in-house counsel to do so. For purposes of this resource, however, N/A is used because non-locally licensed in-house counsel may practice under the registered in-house counsel rule on pro bono practice.

State	In-House Registration/Certification Requirement	Rule on Registered In-House Counsel Pro Bono Practice	Rule on Out-of-State Attorneys Providing Pro bono	Pro Bono Provision <sup>5</sup>
Delaware	Yes	<a href="#">Del. Sup. Ct. R. 55.1(g)</a>	N/A	Registered in-house counsel may participate in the provision of any and all legal services pro bono publico in Delaware offered under the auspices of organized legal aid societies, or state/local bar association projects, or provided under the supervision of a member of the Delaware Bar who is also working on the pro bono representation.
District of Columbia	No*	<a href="#">D.C. App. R. 49(c)(9)(D)</a>	N/A	In-house counsel who qualify as “internal counsel” may provide pro bono legal services if assigned or referred by an organization that provides legal services to the public without fee; provided that the individual is supervised by an active member of the D.C. Bar.
Florida	Yes	<a href="#">Fla. B. Reg. R. 12; Fla. B. Reg. R. 17-1.3(a)</a>	N/A	In-house counsel certified as “authorized house counsel” may provide pro bono legal services as an “emeritus attorney” if: (i) receives approval from the Clerk of the Supreme Court, (ii) works in association with an approved legal aid organization, and (iii) works under the supervision of a Florida Bar member. If appearing in court or an administrative tribunal, the client and supervising attorney must provide written consent. The supervising attorney must sign all documents filed in any court or administrative tribunal.
Georgia	No*	No	<a href="#">Ga. Sup. Ct. R. 114-120</a>	Out-of-state attorneys may apply to provide pro bono services if supervised by a licensed practicing attorney who is employed by or volunteers with an enumerated organization. Valid for a period not to exceed 18 months.
Hawaii	No	No	No	N/A
Idaho	Yes	<a href="#">Idaho Bar Comm’n R. 225(e)</a>	N/A	A person licensed as house counsel may perform pro bono service in association with an Approved Legal Assistance Organization approved by the Idaho Supreme Court.
Illinois	Yes	<a href="#">Ill. Sup. Ct. Rule 716(g)</a>	N/A	Registered in-house counsel may provide voluntary pro bono public services as defined in Rule 756(j) of the Illinois Rules on Admission and Discipline of Attorneys.
Indiana	Yes	No	No	N/A
Iowa	Yes	<a href="#">Iowa Ct. R. 31.16</a>	N/A	Registered in-house attorneys are authorized to provide pro bono legal services through an established not-for-profit bar association pro bono program, or legal services program, or through such organizations specifically authorized in the state.

State	In-House Registration/Certification Requirement	Rule on Registered In-House Counsel Pro Bono Practice	Rule on Out-of-State Attorneys Providing Pro bono	Pro Bono Provision <sup>5</sup>
Kansas	Yes	<a href="#">Kan. Sup. Ct. R. 712(i)</a>	No	Registered in-house attorneys may provide pro bono legal services through an approved legal services organization or accredited law school clinic.
Kentucky	Yes	<a href="#">Ky. Sup. Ct. R. 2.111(4)(c)</a>	N/A	Registered in-house attorneys with “limited practice certificates” may provide pro bono legal services through a duly organized legal aid program or a local bar association legal pro bono program or initiative.
Louisiana	Yes	No	No	N/A
Maine	No*	No	No	N/A
Maryland	No*	No	<a href="#">Md. R. Attys. 19-215</a>	Out-of-state attorneys may be certified to provide pro bono legal assistance, under the supervision of a Maryland Bar member, if associated with an approved entity that provides civil legal services to low-income individuals in Maryland, the Maryland Office of the Public Defender, a clinic in a courthouse offering pro bono legal services, or a local pro bono committee or bar association.
Massachusetts	Yes	<a href="#">Mass. Sup. Ct. R. 4.02(9)(b)</a>	N/A	Registered in-house counsel may provide pro bono under the auspices of either (1) an approved legal services organization or (2) a lawyer admitted to practice and in good standing in the Commonwealth of Massachusetts.
Michigan	Yes	No	No	N/A
Minnesota	Yes	<a href="#">MN Rules 9 and 10 for Admission to the Bar</a>	N/A	“House counsel” registered under Rule 10 and “temporary house counsel” registered under Rule 9 may provide pro bono legal services to pro bono clients referred to the lawyer through an approved legal services provider.
Mississippi	No	No	<a href="#">Miss. R. App. Proc. 46(f)</a>	Out-of-state attorneys may provide pro bono services under the supervision of a qualified legal service provider.
Missouri	Yes	<a href="#">Mo. Sup. Ct. R. 8.105(c)</a>	N/A	Registered in-house counsel may engage in pro bono work with an organization approved for this purpose by the Missouri Bar.
Montana	No*	No	No	N/A
Nebraska	Yes	<a href="#">Neb. Sup. Ct. R. § 3-1201(D)</a>	N/A	Registered in-house counsel may provide pro bono legal services through an established not-for-profit association, pro bono program or legal services program or through such organizations specifically authorized in Nebraska.
Nevada	Yes	No	<a href="#">Nev. Sup. Ct. R. 49.2</a>	Out-of-state attorneys may apply for certification as an emeritus attorney to practice law only through an approved legal services provider in the Emeritus Attorney Pro Bono Program.



State	In-House Registration/Certification Requirement	Rule on Registered In-House Counsel Pro Bono Practice	Rule on Out-of-State Attorneys Providing Pro bono	Pro Bono Provision <sup>5</sup>
New Hampshire	No*	No	No	N/A
New Jersey	Yes	<a href="#">N.J. Ct. R. 1:27-2(g)</a>	N/A	Limited license in-house counsel may provide pro bono legal services as a volunteer with a certified legal services or public interest organization, law school clinical or pro bono program, or governmental entity.
New Mexico	Yes	No	<a href="#">N.M. R. Gov. Admission B. 15-301.2</a>	Out-of-state attorneys may apply for a legal services limited license to represent legal services clients through a qualified legal services provider.
New York	Yes	<a href="#">22 NYCRR § 522.8</a>	N/A	Registered in-house counsel may provide pro bono legal services in accordance with New York Rules of Professional Conduct rule 6.1(b) and other comparable definitions of pro bono legal services in New York.
North Carolina	No*	No	<a href="#">N.C.G.S. § 84-7.1(3)</a>	Out-of-state attorneys permitted by the North Carolina Bar may represent indigent clients on a pro bono basis under the supervision of active members employed by a nonprofit organization qualified to render legal services.
North Dakota	Yes	No	<a href="#">N.D. Sup. Ct. Admission Prac. R. 3.1</a>	Out-of-state attorneys with 5+ years of experience may, upon application, practice as an unpaid volunteer under the supervision of an approved legal services organization so long as that organization employs at least one North Dakota attorney.
Ohio	Yes	<a href="#">Ohio Sup. Ct. R. Gov. B. VI § 6(E)</a>	N/A	Registered in-house counsel may provide pro bono legal service if the legal service is provided to either a person of limited means or a charitable organization and the legal service is assigned or verified by an approved organization.
Oklahoma	Yes	No	No	N/A
Oregon	Yes	<a href="#">Or. Sup. Ct. R. Adm. Att'y § 16.05(7)(f)</a>	N/A	Registered in-house counsel may provide pro bono legal services through a pro bono program certified by the Oregon State Bar Bylaw 13.2, provided that the attorney has malpractice liability coverage.
Pennsylvania	Yes	<a href="#">PA Bar Rule 302(b)(3)</a>	N/A	Registered in-house counsel may participate in the provision of pro bono services offered under the auspices of organized legal aid societies or state/local bar association projects, or provided under the supervision of a bar member who is also working on the pro bono representation.
Rhode Island	Yes	<a href="#">R.I. Sup. Ct. Art. II R. 9(b)</a>	N/A	Registered in-house counsel may provide pro bono legal services offered and supervised by the Rhode Island Bar Association.

State	In-House Registration/Certification Requirement	Rule on Registered In-House Counsel Pro Bono Practice	Rule on Out-of-State Attorneys Providing Pro bono	Pro Bono Provision <sup>5</sup>
South Carolina	Yes	<a href="#">S.C. App. Ct. R. 405(m)</a>	N/A	Registered in-house counsel may provide pro bono legal services if associated with an approved legal services organization which receives, or is eligible to receive, funds from the Legal Services Corporation or is working on a case or project through the South Carolina Bar Pro Bono Program; provided that he or she is supervised by a member of the South Carolina Bar.
South Dakota	No*	No	No	N/A
Tennessee	Yes	<a href="#">Tenn. Sup. Ct. R. 7 § 10.01(c)</a>	N/A	Registered in-house attorneys may provide pro bono legal services through an established not-for-profit bar association, pro bono program or legal services program or through such organizations specifically authorized in this jurisdiction.
Texas	Yes	No	<a href="#">Tex. State Bar R. Art. XIII</a>	Out-of-state attorneys may participate in the New Opportunities Volunteer Attorney (“NOVA”) Pro Bono Program to provide legal services under the supervision of an approved legal service organization.
Utah	Yes	<a href="#">Utah Jud. Admin. R. 14-719(a)</a>	N/A	Registered in-house counsel may provide pro bono legal services under the auspices of an approved sponsoring entity.
Vermont	No*	No	<a href="#">Vt. Admin. Order 41 § 11</a>	Out-of-state attorneys may provide pro bono legal services under the auspices of a nonprofit organization, to persons of limited means or charitable, religious, civic, community, governmental, and educational organizations which are designed primarily to address the needs of persons of limited means.
Virginia	Yes	<a href="#">Va. Sup. Ct. R. 1A:5 Part I(g)</a>	N/A	In-house counsel certified under Part I of Va. Sup. Ct. R. 1A:5 may provide voluntary <i>pro bono publico</i> services in accordance with Rule 6.1 of the Virginia Rules of Professional Conduct. There is no pro bono provision for in-house counsel certified under Part II of Va. Sup. Ct. R. 1A:5.
Washington	Yes	<a href="#">Wash. Admission &amp; Prac. R. 8(f)(8)</a>	N/A	Registered in-house counsel may provide legal services for no fee through a qualified legal services provider for indigent clients.

State	In-House Registration/Certification Requirement	Rule on Registered In-House Counsel Pro Bono Practice	Rule on Out-of-State Attorneys Providing Pro bono	Pro Bono Provision <sup>5</sup>
West Virginia	No*	No	<a href="#">W. Va. R. Admission to Prac. Law 9.0</a>	Out-of-state attorneys, upon application, may provide pro bono legal assistance in all causes in which he or she is associated with an organized legal services or public defender program sponsored, approved or recognized by the Board of Law Examiners. An attorney can only practice under this rule for 60 months.
Wisconsin	Yes	<a href="#">Wisc. Sup. Ct. R. 10.03(4)(f)</a>	N/A	Registered in-house counsel may provide pro bono legal services as provided in SCR 20:6.1.
Wyoming	No*	No	No	N/A

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