

**T H E**  
**T E N N E S S E E**  
**L A W**  
**I N S T I T U T E**

PRESENTS

THE

**FIFTY-FIRST ANNUAL**  
**REVIEW SEMINAR**

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Tennessee Law Institute

Knoxville, Tennessee

## **SPEAKERS**

**Sarah Y. Sheppard**, of Knoxville is a shareholder of Lewis Thomason PC, whose practice includes domestic relations, estates and probate, and other civil areas. She is a Rule 31 Mediator and a member of the National Academy of Distinguished Neutrals. She is a past President of both the Tennessee and Knoxville Bar Associations and a Fellow of the American, Tennessee and Knoxville Bar Associations.

**Lucian T. Pera** is a partner in Adams and Reese LLP, whose practice includes legal ethics, media law, and commercial litigation. The ABA Center for Professional Responsibility recently bestowed on him the prestigious Michael Franck Award, their highest award for work in the field of ethics and professional responsibility. For more than a decade he led the TBA committee that drafted Tennessee's current ethics rules and served on the ABA committee that substantially revised the ABA Model Rules of Professional Conduct in 2002. He has served as Treasurer of the ABA and President of the TBA.

**Wade V. Davies** is the Managing Partner at Ritchie, Dillard, Johnson & Stovall, P.C. in Knoxville. His practice is primarily criminal defense. He is a Fellow of the American College of Trial Lawyers. He has served two terms as a member of the Board of Professional Responsibility, is on the Executive Committee of the Tennessee Association of Criminal Defense Lawyers, and is a past President of the Knoxville Bar Association. He is also Board Chair of the McNabb Center.

**Edward D. Lanquist, Jr.** is a shareholder with Baker Donelson, located in its Nashville office. His practice involves patent, trademark and copyright litigation, intellectual property counseling, trademark prosecution and technology law. He is extremely active in the legal community and with charitable organizations, is a frequent CLE lecturer on a wide variety of topics, and a Rule 31 mediator. Ed served as Tennessee Bar Association General Counsel for seven years, is the current Vice-President and will be TBA President in two years.

## **THE ONES WE MISS**

**Donald F. Paine** started the Tennessee Law Institute in 1972 and was our mentor, chief researcher, beloved leader and great friend to the bench and bar alike, even as he fought cancer for over 34 years. His death in November of 2013 left a huge void in our hearts, but his research techniques and teaching style have continued, making TLI the quality program it has been for over five decades.

**John A. Walker, Jr.** joined TLI in its second year and was an integral part of the commercial law aspects of our program until his retirement for health reasons in 2011. John passed away in September 2016.

**John M. Smartt**, although never a lecturer, was TLI's administrator for fifteen years. He was our ringmaster, cheerleader, and was even known to talk a legal secretary into pulling an attorney out of a deposition for an important message: "Joe, I see you haven't signed up for the seminar yet, and I sure wouldn't want you to miss it!" Ironically, John's death was within a week of Don's.

We miss them all, as we continue to carry on the mission of TLI.

**ETHICS**  
**AND**  
**PROFESSIONALISM**

**Presented by**  
**Sarah Y. Sheppard**  
**and**  
**Lucian T. Pera**

## TLI 2022 Ethics Last Hour

### **Sneaking Around: Protecting Your License While Practicing Multijurisdictionally**

These days, lawyers and clients work remotely, from home or elsewhere. (What's an office?)

Clients' legal needs constantly cross state boundaries. And we all seem to be able to be present pretty much anywhere, anytime. So it's time for a refresher on the geographical limits of our law licenses.

We'll take a 60-minute tour of how to stay (reasonably) safe while serving clients who need our help all over the place, without regard to those pesky state lines.

#### **A few relevant cases**

*Birbrower, Montalbano, Condon & Frank v. Superior Ct.*, 17 Cal. 4th 119, 949 P.2d 1 (1998), *as modified* (Feb. 25, 1998).

*In re Charges of Unprofessional Conduct in Panel File No. 39302*, 884 N.W.2d 661 (Minn. 2016).

*Green v. Bd. of Prof. Resp. of Supreme Ct. of Tennessee*, 567 S.W.3d 700 (Tenn. 2019).

#### **Tennessee Unauthorized Practice of Law (“UPL”) Law**

Tenn. Code Ann. § 23-3-103:

No person shall engage in the *practice of law* or do *law business*, or both, ... unless the person has been duly licensed and while the person's license is in full force and effect, nor shall any association or corporation engage in the practice of the law or do law business, or both.

Tenn. Code Ann. § 23-3-101:

“Law business” means the advising or counseling for valuable consideration of any person as to any secular law, the drawing or the procuring of or assisting in the drawing for valuable consideration of any paper, document or instrument affecting or relating to secular rights, the doing of any act for valuable consideration in a representative capacity, obtaining or tending to secure for any person any property or property rights whatsoever, or the soliciting of clients directly or indirectly to provide such services;

“Practice of law” means the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any

act in such capacity in connection with proceedings pending or prospective before any court, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies, or the soliciting of clients directly or indirectly to provide such services.

### **Tennessee Multi-Jurisdictional Practice (“MJP”) Rule**

#### **Tenn. Sup. Ct. R. 8, RPC 5.5**

#### **Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law**

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law or rule of this jurisdiction.

(3) A lawyer providing legal services pursuant to paragraph (d)(1) is subject to registration pursuant to Tenn. Sup. Ct. R. 7, § 10.01, and may be subject to other requirements, including assessments for client protection funds and mandatory continuing legal education. Failure to register in a timely manner may preclude the lawyer from later seeking admission in this jurisdiction.

(e) A lawyer authorized to provide legal services in this jurisdiction pursuant to paragraph (d)(1) of this Rule may also provide pro bono legal services in this jurisdiction, provided that these services are offered through an established not-for-profit bar association, pro bono program or legal services program or through such organization(s) specifically authorized in this jurisdiction and provided that these are services for which the forum does not require pro hac vice admission.

(f) A lawyer providing legal services in Tennessee pursuant to paragraph (c) or (d) shall advise the lawyer's client that the lawyer is not admitted to practice in Tennessee and shall obtain the client's informed consent to such representation.

(g) A lawyer providing legal services in Tennessee pursuant to paragraph (c) or (d) shall be deemed to have submitted himself or herself to personal jurisdiction in Tennessee for claims arising out of the lawyer's actions in providing such services in this state.

(h) A lawyer or law firm shall not employ or continue the employment of a disbarred or suspended lawyer as an attorney, legal consultant, law clerk, paralegal or in any other position of a quasi-legal nature.

### **ABA Resource on Adoptions of ABA Model Rule 5.5**

ABA Center for Professional Responsibility Policy Implementation Committee,  
“Variations of the ABA Model Rules of Professional Conduct,”  
[https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/mrpc-5-5.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc-5-5.pdf)

**Association of Professional Responsibility Lawyers (“APRL”) Proposal**  
(<https://aprl.net/wp-content/uploads/2022/04/Letter-regarding-our-proposal-to-ABA-President.pdf>)

### **RULE 5.5: Multijurisdictional Practice of Law**

(a) A lawyer admitted and authorized to practice law in any United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction, subject to the other provisions of this rule.

(b) Only a lawyer who is admitted to practice in this jurisdiction may hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer who provides legal services in this jurisdiction shall:

(1) Disclose where the lawyer is admitted to practice law;

(2) Comply with this jurisdiction's rules of professional conduct, including but not limited to Rule 1.1 (Competence), and with the admission requirements of courts of this jurisdiction;

(3) Be subject to Rule 8.5 regarding the disciplinary authority and choice of law rules of this jurisdiction; and

(4) Not assist another person in the unauthorized practice of law in this, or any other, jurisdiction.

(d) A lawyer admitted and authorized to practice law in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates;

(2) are not services for which the forum requires pro hac vice admission; and

(3) do not arise under the law of any U.S. jurisdiction, unless the services are provided after consultation with a lawyer authorized to practice law in this jurisdiction.