

Chicago Lawyer

Borderline: Practicing across the Illinois line

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Chicago is in a perfect spot. It's right in the center of the Midwest. The location is great, and the people are friendly. But not all Midwestern business is Chicago business: It could be that no part of the business has a Chicago connection, or, maybe more likely, a Wisconsin business or an Indiana business simply wants a lawyer, or a law firm, that is set up to practice in that home state.

For many years, the solution to that problem was fairly simple: Get licensed to practice law in Wisconsin or Indiana. But with the Internet and the expansion of large law firms, the smaller law firm or lawyer can't match up - but can, reverting to simpler times, become a member of another state's bar.

This is not an idea that is limited to lawyers who practice on the state's borders.

About 27,000 lawyers with Illinois licenses are licensed in other states, said James J. Grogan, deputy administrator and chief counsel of the Attorney Registration and Disciplinary Commission.

"It's great for mobility," he said.

"You can simply go into courts in another state without having to worry about pro hac vice, or deal with any license issues; it's so much easier."

Here's what comes with it: having a physical presence in that state, learning and staying fresh with the local law of their neighboring state, and making new friends and building relationships. For Chicago attorneys going to meet their clients in Wisconsin, Indiana, Missouri or Iowa it is really all about building client trust.

Today the phone rings at your law office in the Loop.

It's a wealthy client in a small, rural town beyond the state line who needs your help setting up a charitable organization. Do you have the license to represent your client in that state? More to the point, will that client trust you not to get homered by locals and also trust you to provide the best services possible? If you don't know anyone there, you have to roll the dice and select local counsel who you hope meets your standards.

"Due to Wisconsin's close proximity to Illinois, our firm wanted to be able to take care of business up there," said Eric E. Kalnins, a partner with the Chicago law firm of Handler Thayer. "Sometimes there are people in small towns who fit our affluent clientele. Our clients cover the gamut from high-profile athletes to people who want to keep a low profile."

Making it work

Kalnins' firm handles the family office market and serves clients of high net worth. He received his Illinois license in 1999 and Wisconsin license in November 2009. He grew up in Lancaster, Wis., near Platteville, and lived there for 13 years.

Originally wanting to be licensed in Wisconsin years ago, he said: "You used to have to practice five years there, and then you could get your license. Wisconsin had required 500 hours per year within its own state. As of last year, that changed."

Now you can motion yourself into many jurisdictions, a process that is becoming common in a significant portion of states. If you've practiced law for five years in one state you can sometimes apply to get your license in another without testing or taking a state bar exam.

"The process took me two months," Kalnins said. "The family office market is big business, and clients have interests all over the globe. We needed to branch out to accommodate the needs of our clients looking for tax, estate planning and asset protection advice."

"The trust factor is always something that needs to be considered when dealing with a potential client that is not located in your home state," he said. "Making a client feel comfortable with the fact that his attorney is not located in the client's home state can be difficult in certain situations. Being licensed in the client's home state is a necessity to build the trust and confidence required in an attorney-client relationship, as well as a requirement legally unless you are working with local counsel."

"Of course, if one is dealing with a federal IRS issue, the client is not as concerned about the attorney's location, or the attorney's licensing status in the client's home state due to the fact that in such circumstances you are not generally dealing with state-centric issues."

"More state-centric legal matters will cause a client to look more closely at the attorney's qualifications to provide advice in the client's home state," Kalnins said. "States have legal licensing requirements in an attempt to make sure that the attorneys who are providing advice are competent in their areas of practice."

But he said, on the other hand, in some geographic areas of the country people are reluctant to use the services of an out-of-state attorney even if such an attorney is licensed in the client's home state. For example, in speaking with some fellow lawyers, if you are

not a Texan it can be very difficult to create a client relationship even if you have a license in Texas, he said.

"In some other jurisdictions, individuals like the idea of dealing with a big-city attorney for their legal issues regardless of whether or not that attorney is located in his or her home state," Kalnins said. "Advisers play a key role in this area. Usually if an adviser for a client recommends an attorney that is out of state, the client will feel comfortable with the relationship, due to the fact that an adviser has most likely previously worked with such an attorney and has 'blessed' the relationship with his recommendation."

The challenges and benefits

Grogan, of the ARDC, pointed out some pragmatic issues as well.

"If you're an estate planner," he said, "and you have clients with almost all their property here and a little condo in Florida, you can come under Florida license requirements. Florida takes an extremely aggressive view as to what to do with deeds and trusts.

"Florida can consider it unauthorized practice if you work with deed and trusts without a Florida ticket."

Although Internet-savvy clients feel at ease researching investment opportunities from the comfort of their den or home office, they still want legal representation they can meet in person and can rely on. They want a lawyer who knows the ropes locally. Being licensed in their state helps build that all-important trust.

Stetson F. Atwood is licensed in two states and is a partner at Donohue Brown Mathewson & Smyth.

"I follow closely the local rule in northern Indiana's Lake County," he said.

Atwood, who has been licensed in Indiana since 1997 and Illinois since 1994, said: "In 1997 I was doing work for a firm that had business on the South Side of Chicago and in Indiana. The rules of procedure are quite different in Lake County, Ind., and Cook County. I had to learn them both. Keeping up to date with the law is a big challenge if you're going to be licensed in both states. You've got to be prepared. You don't want to get homered by someone with local advantage.

"I have some clients who provide services in both Illinois and Indiana, and being licensed in both states allows me to represent these entities in lawsuits filed in each state," Atwood said. "This is beneficial to our firm because we are assigned the work; it is beneficial to the clients because they are not required to retain new counsel simply because a case is filed in Indiana."

His firm deals with medical negligence defense; and he has also represented a transportation company involved in an accident while transporting goods across state lines.

"At the same time, I've met fantastic lawyers in smaller towns," Atwood said. "In a case which was pending in St. Joseph County, I used local counsel to handle routine matters, avoid excessive travel and ensure that we were complying with all of the local rules. Local counsel can also be helpful because they may know the judge and opposing counsel. Keep in mind, local attorneys are familiar with their venue and have been some of the most qualified attorneys that I deal with on a regular basis."

Atwood is the hiring partner at his law firm. "I am the only one handling Indiana for my Chicago law firm. About 20 percent of my business is in Indiana. I have relationships with clients on the East and West Coast, and they hire me to handle cases in Illinois and Indiana based on our prior relationships. I've met some great people. I really enjoy practicing in Indiana. I enjoy the challenge of keeping up with the law in two states."

Licensed in Illinois in 2000 and concentrating on health-care compliance, regulatory and transactional work, Heather Fesko Delgado is a partner at Barnes & Thornburg. Her firm has an office in Indiana, where she took and passed the bar in 1996. Delgado attended Indiana University School of Law-Indianapolis, where she often does business today.

"If you have a license here in Indiana, it's easy to do business," she said. "But the state court procedures differ, so you have to be careful."

One of the keys to practicing in another state is that you understand your clients, she said. That builds trust, and that is where your business comes from. "Clients come to appreciate me, being that I'm originally from Indiana."

Delgado has met several lawyers practicing in more than one state. "Most law firms today want a presence in other states," she said. "It's a value-added bonus, especially in litigation. Using local counsel is invaluable too. They know the judges, and that is really important."

"The license allows me personally to practice in both states. I can have an office in another state but if I want to do the work in that state and I don't have a license, then this could be construed as the unauthorized practice of law in that state."

Another Chicago lawyer familiar with Indiana is Michael E. O'Neill, who graduated from the University of Notre Dame Law School and is licensed in both states, first in Indiana in 1991 and then in Illinois a year later. He commutes daily from his home in Beverly to his office in Schererville, Ind.

A partner at Hinshaw & Culbertson, O'Neill defends lawyers and physicians in malpractice claims. He too noted the differences in rules of procedure between the two

states, but pointed to subtle but important distinctions in substantive law that can pose traps for an unprepared litigator.

"Most of my practice is in Indiana," he said. "However, an Indiana case does get filed in Illinois from time to time. There becomes a battle at times for where the case should be heard. I personally find juries in Indiana are more favorable for the defense."

His main office is in Chicago, and his branch office is the firm's only one in Indiana.

"I'm more comfortable driving down Interstate 65 to an Indianapolis court than going to the Daley Center," he said. "In negligence claims we strictly apply comparative fault in the state of Indiana. But Indiana doesn't have a Contribution Act like Illinois. The difference is important in how we pursue a third party. In Illinois you can directly sue another culpable party; in Indiana you cannot."

"You have to have an office in the state to waive-in, but some try to use pro hac vice, which lets you petition the court to practice on a temporary basis," he said. "It's a case-by-case decision by the particular state. I feel it's better not to dabble, however, and get licensed."

Proximity and necessity

Chicago, long a hub for manufacturing and transportation, has become strategic for attorneys here as well, especially those who are licensed to handle business in the surrounding states and have adapted to these favorably by traveling to those out-of-state communities and serving their clients with a friendly Midwestern face.

Ian R. Alexander is a partner at the Chicago law firm of Goldberg & Goldberg, which has been in business for 44 years, concentrating its practice in plaintiff's medical malpractice and complex tort litigation. According to the firm's website, they've settled cases in 23 states, and the name partners, who are twin brothers, are licensed to practice before the bars of Illinois, Florida, Colorado and California.

"Chicago has been and will always be our primary base of operations," Alexander said. "In the past we have had offices in other states; for years we had a Beverly Hills, Calif., office. We employ local counsel to handle routine matters out of state so that we don't get home-towned, but we always handle substantive matters in-house."

The nature of his practice requires his firm's lawyers to travel around the country. "Whether we handle cases solely in Illinois or out of state, the elements of negligence cases are the same here and as far away as Hawaii," he said. "You have to prove that a doctor or hospital breached the standard of care and that conduct caused your client to become injured. If we can get that far we can adapt to the exigencies of any locale."

Steven J. Thayer, chairman and founding partner of Handler Thayer, had initially thought it would be great to get licensed in Iowa, where he grew up. His firm handles

entrepreneurial clients, and about 80 percent of their work is with families of high net worth.

"Most of our business in Iowa is through referrals from other Iowa clients," he said. "There is a new Illinois rule that clarifies when out-of-state lawyers can practice in Illinois, but not every state has adopted such rules, which makes it difficult to know when it's okay to cross state lines. To be safe, we work with local counsel in every state where we have clients."

A graduate of DePaul University College of Law, Thayer has practiced since 1991. He was born in Cedar Rapids, Iowa, and returns there from time to time.

"Iowa was initially easy to get licensed in as an Illinois lawyer," he said.

"Most states make it easier to get licensed if you are already licensed and practicing in another state. Iowa changed their continuing education requirements a few years ago, however, making it more difficult to maintain my Iowa license."

He put his Iowa license on inactive status because of the logistical issues of getting back to Iowa to meet CLE requirements. "I am still a member of the Iowa State Bar Association but technically not actively licensed," he said.

Daniel J. Burnham, a partner in the Chicago office of Nixon Peabody, an international firm with about 700 lawyers, has been practicing law since 1994 and handles intellectual property matters.

"I am currently licensed to practice in two states, Illinois and Missouri," he said. "My practice is primarily based on federal law, such as U.S. patent, trademark and copyright laws, so there is not much difference in the day-to-day practice in either state. While there are some differences in the procedures of the federal courts in Illinois and Missouri, the substantive law in intellectual property litigation remains the same.

"Given the focus of my practice as an IP attorney, there are not many challenges I face practicing in two different states," Burnham said. "While attorneys who focus their practice on state law matters face the challenge of learning different laws and state-court procedures, intellectual property attorneys who handle federal causes encounter these challenges to a much lesser degree. This has helped me to avoid having a moment in which I feel out of place."

He indicated that Illinois and Missouri have reciprocity; therefore, he was not required to take the bar exam in Missouri. However, the Missouri application for admission was in-depth and took quite a bit of time, including gathering several personal references.

Getting licensed in another state and having a physical presence there and being able to connect with local counsel is valuable for widening the scope of business and being

successful. Being knowledgeable about laws within the state helps build the confidence of clients.

It's true that taking more than one state bar exam is tough, as many lawyers know, but on the flip side, being unable to meet an out-of-state client's needs in today's global marketplace would be missing an opportunity to get new business.

Some see communication technologies of the Internet, e-mail and video as a be-all and end-all to making information clear and easy to access, especially for legal matters; but clients also want to have a strong sense of trust with their legal counsel from Chicago. That means Chicago lawyers need to be ready to go when they get that call from an out-of-state client.

Chicago lawyer Kalnins probably said it best: "Don't limit yourself to one state."