

Peace of Mind for Pennsylvania Lawyers Working Remotely

The pandemic has changed the way virtually every lawyer practices. The days of working exclusively, or primarily, in a physical office are history, with work being performed from numerous other locations—including those in states other than where a lawyer is licensed.

Consider one scenario, which is likely common for many Philadelphia area attorneys. Attorney Mary Jones is licensed to practice law only in Pennsylvania, but has a home in Atlantic City, from which she is handling most of her cases. Mary is not licensed in New Jersey, and is only handling matters in Pennsylvania.

Clearly, Mary is practicing law while physically in New Jersey. But is Mary's conduct the unauthorized practice of law (UPL) in New Jersey? Since the pandemic, and the forced closure of many offices, that question has arisen frequently—generally in that or similar scenarios. In each instance, office-based practice was not an option.

Under Pennsylvania Rule of Professional Conduct 5.5(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.” This Rule is identical to Model Rule of Professional Conduct 5.5(a), and is similar to the Rules adopted in other states, including New Jersey.

So, is Mary guilty of violating the UPL Rule? No.

Recognizing these concerns, the American Bar Association Standing Committee on Ethics and Professional Responsibility

issued Formal Opinion 495, “Lawyers Working Remotely,” on December 16, 2020. The Opinion specifically concludes that lawyers such as Mary are not violating the Rule 5.5.

The summary accompanying the Opinion initially explains that “Lawyers may remotely practice the law of the jurisdictions in which they are licensed while physically present in a jurisdiction in which they are not admitted if the local jurisdiction has not determined that the conduct is the unlicensed or unauthorized practice of law and if they do not hold themselves out as being licensed to practice in the local jurisdiction, do not advertise or otherwise hold out as having an office in the local jurisdiction, and do not provide or offer to provide legal services in the local jurisdiction.”

In other words, Formal Opinion 495 confirms that merely working in a state where a lawyer is not licensed does not or should not, run afoul of Rule 5.5.

Opinion 495 recognizes that because of technology, lawyers are able to and have been working remotely, *i.e.*, from locations other than their traditional physical offices. In doing so, they are providing services to clients in jurisdictions where they are licensed, even though they are physically located in a jurisdiction they are licensed.

The Opinion offers multiple examples of such a situation. For example, a law-

yer such as Mary may reside in a different jurisdiction from where the lawyer is licensed. Or a pandemic might result in a situation in which safety measures include the physical closure or limited use of a physical office. Or a lawyer may be authorized under federal law to appear and provide services in other jurisdictions where they are not licensed. In each case, the

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lawyer's conduct is not the unauthorized practice of law.

The Opinion explains that “The purpose of Model Rule 5.5 is to protect the public from unlicensed and unqualified practitioners of law,” noting the purpose of the Rule “is not served by prohibiting a lawyer from practicing the law of a jurisdiction in which the lawyer is licensed, for clients with matters in that jurisdiction, if the lawyer is for all intents and purposes invisible *as a lawyer* to a local jurisdiction where the lawyer is physically located, but not licensed.” This conclusion is practical and recognizes the fact the practice of law has evolved.

Of course, like every situation, there are nuances, albeit logical ones. Thus, the Opinion states that “Model Rule 5.5(b)(1) prohibits a lawyer from ‘establish[ing] an office or other systematic and continuous presence in [the] jurisdiction [in which

the lawyer is not licensed] for the practice of law.” The Opinion explains that “A local office is not ‘established’ within the meaning of the rule by the lawyer working in the local jurisdiction if the lawyer does not hold out to the public an address in the local jurisdiction as an office and a local jurisdiction address does not appear on letterhead, business cards, websites, or other indicia of a lawyer’s presence.”

Further, a lawyer “does not ‘establish’ a systematic and continuous presence in the jurisdiction for the practice of law since the lawyer is neither practicing the law of the local jurisdiction nor holding out the availability to do so. The lawyer’s physical presence in the local jurisdiction is incidental; it is not for the practice of law. Conversely, a lawyer who includes a local jurisdiction address on websites, letterhead, business cards, or advertising may be said to have established an office or a systematic and continuous presence in the local jurisdiction for the practice of law.”

The Philadelphia Bar Association Professional Guidance Committee and the Pennsylvania Bar Association Committee on Legal Ethics and Professional Respon-



sibility recently issued Joint Formal Opinion 2021-100, which endorses the ABA Opinion.

This timely Opinion concludes by reminding attorneys that they may “not hold out [their] presence or availability to perform legal services in the local jurisdiction [where they are physically present] or actually provide legal services for matters subject to the local jurisdiction, unless otherwise authorized.” In other words, you can practice law where you

are licensed, regardless of where you are physically located. ■

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