



**PENNSYLVANIA BAR ASSOCIATION
COMMITTEE ON LEGAL ETHICS AND PROFESSIONAL RESPONSIBILITY
PHILADELPHIA BAR ASSOCIATION PROFESSIONAL GUIDANCE COMMITTEE
JOINT FORMAL OPINION 2021-100**

**ETHICAL CONSIDERATIONS FOR LAWYERS PRACTICING LAW
FROM PHYSICAL LOCATIONS WHERE THEY ARE NOT LICENSED**

March 2, 2021

I. Introduction

This Formal Opinion clarifies the ethical guidance provided in American Bar Association Standing Committee On Ethics And Professional Responsibility Formal Opinion 495: “Lawyers Working Remotely” (December 16, 2020), as it applies to Pennsylvania-licensed lawyers who practice while physically located in a state where they are not licensed to practice. Some attorneys have expressed a concern during the pandemic whether, under Pa.R.P.C. 5.5, a lawyer who lives in one state may practice remotely in another state, such as a Pennsylvania-licensed lawyer who lives in New Jersey but is not licensed there practicing from a home office physically located in New Jersey.

In this Opinion, the Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility and the Philadelphia Bar Association Professional Guidance Committee adopt ABA Formal Opinion 495 and further conclude that a lawyer licensed in Pennsylvania, may work remotely from another jurisdiction even if the lawyer is not licensed in that jurisdiction, so long as appropriate steps are taken as more fully set forth in the ABA Formal Opinion.

II. Discussion

The practice of law has been transformed in recent years from a traditional office-based model to one in which lawyers practice remotely and virtually, often from outside of Pennsylvania. The COVID-19 pandemic further transformed the practice of law forcing many lawyers to work remotely from various locations, including residences in states where they are not licensed to practice law.

The shift to a predominantly remote-based practice model has raised concerns whether a Pennsylvania lawyer practicing law from a physical location outside of Pennsylvania engages in

the unauthorized practice of law even though the attorney's practice is limited to practicing Pennsylvania law for clients in Pennsylvania.

To address these concerns, ABA Formal Opinion 495 concluded:

The purpose of Model Rule 5.5 is to protect the public from unlicensed and unqualified practitioners of law. That purpose 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. The Committee's opinion is that, in the absence of a local jurisdiction's finding that the activity constitutes the unauthorized practice of law, a lawyer may practice the law authorized by the lawyer's licensing jurisdiction for clients of that jurisdiction, while physically located in a jurisdiction where the lawyer is not licensed if the lawyer does not hold out the lawyer's presence or availability to perform legal services in the local jurisdiction or actually provide legal services for matters subject to the local jurisdiction, unless otherwise authorized.

Thus, ABA Formal Opinion 495 provides an answer to the question raised frequently to our Committees, *i.e.*, Does Pa.R.P.C. 5.5 permit a lawyer who lives in one state to remotely practice in another, such as a Pennsylvania-licensed lawyer who lives in New Jersey but is not licensed there practicing from a home office physically located in New Jersey? Upon review of Pa.R.P.C. 5.5, the Committees conclude that a Pennsylvania-licensed lawyer who lives outside of Pennsylvania in a state where he or she is not licensed may practice from a home office physically located in the other state provided that the other state does not treat such remote practice as the unauthorized practice of law.¹

Opinion 495 addresses this concern by concluding 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." Words in the rules, unless otherwise defined, are given their ordinary meaning. "Establish" means "to found, institute, build, or bring into being on a firm or stable basis." 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. Likewise it 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

¹ Opinion 495 cautions that "[i]f a particular jurisdiction has made the determination, by statute, rule, case law, or opinion, that a lawyer working remotely while physically located in that jurisdiction constitutes the unauthorized or unlicensed practice of law, then Model Rule 5.5(a) also would prohibit the lawyer from doing so."

an office or a systematic and continuous presence in the local jurisdiction for the practice of law.

Pa.R.P.C. 5.5 (“Unauthorized Practice of Law; Multijurisdictional Practice of Law”) is identical to the Model Rule. Rule 5.5(a) states that “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.” Further, Rule 5.5(b) states that “A lawyer who is not admitted to practice in this jurisdiction shall not... establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.”

As noted in ABA Opinion 495, the purpose of the Rule is to protect the public from unlicensed and unqualified practitioners of law, a purpose that “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.” Our Committees agree.²

III. Conclusion

Lawyers licensed in Pennsylvania may ethically engage in the remote practice of law for clients with Pennsylvania matters while being physically present in a jurisdiction in which they are not admitted unless a statute, rule, case law, or opinion of that jurisdiction prohibits the conduct. Although the lawyers may not hold themselves out as being licensed to practice in the local jurisdiction and may not advertise or otherwise hold themselves out as having an office in the local jurisdiction, or provide or offer to provide legal services in the local jurisdiction, the fact that they are physically located there does not bar them from working remotely for the same clients.

² See, e.g., *Estate of Condon v. McHenry*, 76 Cal. Rptr.2d 922 (Cal. Ct. App. 1998), in which a California appellate court held that a Colorado lawyer and the lawyer’s Colorado law firm representing a Colorado client in a California probate proceeding did not engage in the unauthorized practice of law and, therefore, could recover attorneys’ fees for legal services rendered, including work performed in California. In its decision, the California court found that the location of the client and the greater disciplinary interest of Colorado – the state of predominant impact of the legal services - to be key in its analysis. In addition, in *Florida Bar Standing Committee on the Unlicensed Practice of Law*, FAO # 2019-4 (Aug. 2020), the Committee found that a lawyer who resides in Florida and provides legal services that do not involve Florida law to clients outside of Florida, and who refrains from having or creating a public presence or profile in Florida, does not engage in the unauthorized practice of law under the Florida Rules of Professional Conduct merely because the lawyer is working remotely from home in Florida.

CAVEAT: The foregoing opinion is advisory only and is not binding on the Disciplinary Board of the Supreme Court of Pennsylvania or any other Court. This opinion carries only such weight as an appropriate reviewing authority may choose to give it.