



IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of addition of Supreme
Court Rule 42.2 and Amendment to
Nevada Rule of Professional Conduct
5.5 regarding unauthorized practice of
law and remote work.

ADKT NO.:

PETITION

The Board of Governors of the State Bar of Nevada (Board) petitions the Supreme Court on its administrative docket to adopt proposed Supreme Court Rule (SCR) 42.2 and amend existing Nevada Rule of Professional Conduct (NRPC) 5.5 regarding the unauthorized practice of law (UPL) in the context of out-of-state attorneys remotely working within this state.

These additions and amendments are necessary to clarify that a foreign attorney (i.e., an attorney who is licensed to practice law in another jurisdiction, but not in Nevada) does not engage in the unauthorized practice of law, and is not at risk of criminal prosecution, solely by remotely practicing the law of the other jurisdiction while being physically present in Nevada.

The proposed rules, as amended, are set forth in **Exhibit A**, and a clean version of the proposed rules is set forth in **Exhibit B**.

DISCUSSION

Remote work is increasingly prevalent—not just here in Nevada, but nationwide. Many professionals, including attorneys, now choose to work remotely.

1 With the flexibility that remote work affords, some attorneys have chosen to
2 physically reside in a jurisdiction other than the one in which they are licensed while
3 continuing to practice remotely for their jurisdiction in which they are licensed. But
4 these attorneys must be cognizant of and comply with the local jurisdiction’s laws
5 and rules concerning the UPL.

6 Like many states, Nevada has criminalized UPL by statute. *See* NRS 7.285(2)
7 (misdemeanor for first offense; gross misdemeanor for second offense; felony for
8 third offense).¹ Nevada’s statutory UPL prohibition was initially enacted 63 years
9 ago in 1963 and has not been substantively amended since 1999. It was designed to
10 protect the public from unethical legal representation. *See In re Discipline of*
11 *Lerner*, 124 Nev. 1232, 1237, 197 P.3d 1067, 1071 (2008). Pertinent here, a person
12 must “not practice law *in this state*” if he or she is “not an active member of the
13 State Bar of Nevada” unless “*otherwise authorized to practice law in this state*
14 *pursuant to the rules of the Supreme Court.*” NRS 7.285(1)(a) (emphasis added).

15 Given the statute’s broad language and lack of decisions on point, it is unclear
16 whether an attorney who is not licensed in Nevada but who works remotely from
17 within Nevada while practicing the law of his or her jurisdiction would be engaging
18 in the UPL, and thus, be subject to criminal penalties and, in turn, disciplinary
19 sanctions. Neither the SCRs nor the NRPCs address this issue. It is, however, an
20 issue that is frequently presented to the State Bar of Nevada Standing Committee
21 on Ethics & Professional Responsibility (SCEPR) for review and input. And while
22 SCEPR may render an opinion about whether a non-Nevada attorney would be
23

24 ¹ *E.g.*, Cal. Bus. & Prof. Code § 6126(a) (West 2024) (misdemeanor); Tex. Penal Ann. Code §
25 38.123(c)-(d) (West 2024) (misdemeanor for first offense, felony for subsequent offense); Alaska
Stat. § 08.08.230(a) (2024) (misdemeanor); Fla. Stat. § 454.23 (2025) (felony); N.J. Rev. Stat. §
2C:21-22 (2024) (felony equivalent: “crime of the fourth degree”).

1 engaging in possible unethical practices under these circumstances, SCEPR may
2 not render an opinion about whether the non-Nevada attorney would be exposed to
3 possible criminal prosecution. *Compare* SCR 224(1)(a), *with* SCR 225(4)(d).

4 Current SCR 42 addresses attorneys “not admitted in Nevada,” and current
5 SCR 42.1 addresses attorneys “admitted in Nevada but not maintaining Nevada
6 offices.” Neither rule addresses the issue presented here—attorneys not admitted in
7 Nevada but working remotely while in Nevada. *See* SCR 42 & 42.1. Relatedly, the
8 NRPCs provide that “[a] lawyer who is not admitted to practice in this jurisdiction
9 shall not ... [e]stablish an office *or other regular presence in this jurisdiction for*
10 *the practice of law.*” NRPC 5.5(d)(2)(i) (emphasis added). Whether this provision
11 applies to remote work from, say, a private Nevada home office by a non-Nevada
12 attorney is unclear.

13 Out-of-state attorneys who want to reside in Nevada while remotely
14 practicing the law of their jurisdiction therefore face a problem. Current Nevada
15 authorities governing the UPL in this context are unclear, creating uncertainty for
16 out-of-state attorneys. *See* NRS 7.285; SCR 42; SCR 42.1; NRPC 5.5. By practicing
17 remotely from within this state, a non-Nevada attorney might be engaging in the
18 UPL and running the risk of incurring Nevada criminal or disciplinary penalties. *See*
19 NRPC 5.5(e).

20 Many states have rectified this problem by either declaring it to not be the
21 practice of law *in* the state to practice the law of a different state or simply not the
22 UPL. Neighboring Utah is one such state. According to the Utah Ethics
23 Committee, Utah’s rules “do not prohibit an out-of-state attorney from representing
24 clients from the state where the attorney is licensed even if the out-of-state attorney
25 does so from his private location in Utah.” Utah Ethics Advisory Comm., Op. No.

1 19-03 (2019) (**Exhibit C**). There is, however, an important caveat: “the out-of-state
2 attorney who lives in Utah must not establish a *public* office in Utah or *solicit* Utah
3 business.” *Id.* (emphasis added). The ABA Ethics Committee subsequently opined:

4
5 Lawyers may remotely practice the law of the jurisdictions in
6 which they are licensed while physically present in a jurisdiction
7 in which they are not admitted *if the local jurisdiction has not*
8 *determined that the conduct is the unlicensed or unauthorized*
9 *practice of law* and if they do not hold themselves out as being
10 licensed to practice in the local jurisdiction, *do not advertise or*
11 *otherwise hold out as having an office in the local jurisdiction,*
12 and do not provide or offer to provide legal services in the local
13 jurisdiction.

14
15 ABA Comm. on Ethics & Prof. Resp., Formal Op. 495 (2020) (emphasis
16 added) (**Exhibit D**).

17
18 Utah and the ABA are not alone in endorsing this approach. Jurisdictions
19 throughout the United States have followed suit, and a clear trend has emerged.

20 Some states have amended their rules to explicitly permit this kind of remote
21 work. For instance, Connecticut amended its Rule 5.5 to provide that an out-of-
22 state attorney who is “physically present” in Connecticut and “remotely engages in
23 the practice of law” as authorized by another state is not engaging in the practice of
24 law “in” Connecticut. *See* Conn. Rules of Prof. Conduct, R. 5.5(f) (“To the extent
25 that a lawyer is physically present in this jurisdiction and remotely engages in the

1 practice of law as authorized under the laws of another United States jurisdiction in
2 which that lawyer is admitted, such conduct does not constitute the practice of law
3 in this jurisdiction.”).

4 Other states have opted to amend the commentary to their rules. For example,
5 Colorado amended the comments accompanying its version of Rule 5.5 to add the
6 following clarification:

7
8 Lawyers who are physically present in Colorado and provide
9 legal services under the authority of another jurisdiction do not
10 violate Rule 5.5(a)(1), provided such lawyers do not solicit or
11 accept clients in Colorado for services to be performed in
12 Colorado and do not hold themselves out, directly or impliedly,
13 as authorized to practice law in Colorado.

14
15 Colo. Rules of Prof. Conduct, R. 5.5 cmt. 1 (as amended in 2024).

16
17 A few states—without dealing with remote work specifically—implicitly
18 allow remote work from within their jurisdictions. These states allow out-of-state
19 attorneys to provide legal services in the state so long as their work does not
20 involve the state’s law. For example, neighboring state Arizona’s rule provides
21 that a “lawyer admitted in another United States jurisdiction,” and not suspended or
22 disbarred, “may provide legal services in Arizona *that exclusively involve . . . the law*
23 *of another jurisdiction.*” Ariz. Rules of Prof’l Conduct, R. 5.5(d) (emphasis added).

24 Like Utah and Arizona, Nevada’s largest neighbor (California) allows remote
25 practice. Various California bar associations, like the San Francisco Bar

1 Association, have endorsed the view that an out-of-state attorney can work remotely
2 while living in California. *See, e.g.*, S.F. Bar Ass’n Ethics Comm., Ethics Op. 2021-
3 1 (“For the lawyer who is licensed to practice law in a jurisdiction other than
4 California, but who is residing in California while remotely practicing law as
5 authorized by the lawyer’s out-of-state law license, the lawyer will not be in violation
6 of [Rule 5.5(b)] if the lawyer complies with [certain] conditions[.]”) (**Exhibit E**);
7 *see also* Cal. Bar Ass’n Standing Comm. on Prof’l Resp. & Conduct, Formal Op.
8 No. 2023-208 (acknowledging and tacitly endorsing these local bar associations’
9 ethics opinions: “Lawyers not licensed in California who are working remotely in
10 California should consult [the appropriate legal] authorities regarding
11 multijurisdictional practice and the unauthorized practice of law.”) (**Exhibit F**).

12 Many other states also allow this practice. States that expressly permit remote
13 work include Hawaii, New York, New Jersey, Michigan, Wisconsin, South
14 Carolina, Virginia, New Hampshire, Ohio, and Florida. *See Exhibit G* (Table 1).
15 States that implicitly permit remote work include Minnesota, North Carolina, Rhode
16 Island, and Maryland. *See id.* (Table 2). Some states, like Illinois and South Dakota,
17 would likely follow the ABA’s recommendations because those states, like Nevada,
18 have adopted (or closely follow) the Model Rules. *See id.* (Table 3). And a few
19 states, including Delaware and Pennsylvania, have issued opinions expressly
20 authorizing their in-state attorneys to practice remotely their state’s law while
21 physically living elsewhere. *See id.* (Table 4).²

22 Nevada, however, has not yet addressed this issue and its current rules are
23

24 ² Missouri appears to be the only state that has explicitly prohibited an out-of-state attorney from
25 working remotely within the state. Mo. Off. Of L. Ethics Couns., Informal Op. No. 970098
(undated) (**Exhibit H**); *see also* Mo. Off. Of L. Ethics Couns., Informal Op. No. 2024-03 (2024).

1 ambiguous as to the propriety of remote work. The Board therefore urges the Court
2 to bring Nevada law in line with this clear, growing consensus amongst the states.
3 Doing so will provide much-needed guidance (and reassurance) to non-Nevada
4 attorneys who seek to reside in Nevada while practicing the law of their jurisdictions.
5 Allowing a non-Nevada attorney (who does not open a public office in Nevada, does
6 not hold himself or herself out to Nevadans as being a Nevada attorney, and does
7 not market his or her legal services to Nevadans) to work remotely within Nevada
8 while practicing the law of another jurisdiction would not undermine the objectives
9 of Nevada’s UPL rules and statute. Accordingly, the Board requests that the Court
10 consider and adopt the proposed amendments attached to this Petition.

11 To begin, the Board requests that the Court adopt proposed SCR 42.2—a
12 new rule. The Legislature has expressly acknowledged that the Court, consistent
13 with the separation-of-powers principle, may adopt and amend its own rules to
14 authorize a practice of law that might otherwise constitute the UPL. *See* NRS
15 7.285(1)(a). This comports with the Court’s constitutional prerogative of self-
16 governance. *See In re Discipline of Droz*, 123 Nev. 163, 167, 160 P.3d 881, 884
17 (2007). In other words, though the Court cannot amend the language of the statute
18 itself, the Court can and should clarify the scope of UPL, specifically, whether
19 remote work as discussed in this Petition is UPL. *Id.*

20 Proposed SCR 42.2 would address this issue and provide guidance to non-
21 Nevada attorneys that remotely practicing the law of another jurisdiction is *not* the
22 practice of law in Nevada:

23
24 If a lawyer is physically present in this jurisdiction and remotely
25 engages in the practice of law as authorized under the laws of

1 another jurisdiction in which the lawyer is admitted, such
2 conduct does not constitute the practice of law in this jurisdiction.
3

4 **Exhibits A & B.** By adopting a rule saying that this kind of remote work is not
5 considered “the practice of law,” and thus, is not the UPL, the Court would ensure
6 that non-Nevada attorneys working remotely in this state are not subject to possible
7 criminal prosecution. *See* NRS 7.285(1)(a) (prohibiting a person from engaging in
8 the “practice of law” *unless* the SCRs so allow the practice).

9 But an amendment to the SCRs is only part of the solution. To ensure that
10 SCR 42.2, if adopted, does not conflict with the NRPCs, and to bring the two sets
11 of rules into conformity, the Board further requests that the Court also amend NRPC
12 5.5. The proposed amendment to NRPC 5.5 would provide a new exception to
13 subsection b and slightly modify the existing limitations in subsection d. The
14 proposed new exception under subsection b would provide the following:
15

16 A lawyer who is not admitted in this jurisdiction, but who is
17 admitted and in good standing in another jurisdiction of the
18 United States, does not engage in the unauthorized practice of
19 law in this jurisdiction when: ...
20

21 *The lawyer is physically present in this jurisdiction and remotely*
22 *engages in the practice of law as authorized under the laws of the*
23 *jurisdiction in which the lawyer is admitted.*
24

25 **Exhibit A** (proposed NRPC 5.5(b)(8) (emphasis added)). To harmonize this

1 new exception with existing limitations under the rule, the limitations in subsection
2 d would be amended to provide the following:

3
4 A lawyer who is not admitted to practice in this jurisdiction shall not:

5 (i) Establish an office or other regular presence in this jurisdiction

6 for the practice of law unless the lawyer is remotely practicing

7 law consistent with paragraph (b)(8) of this Rule;

8 (ii) Solicit clients in this jurisdiction; or

9 (iii) Represent or hold out to the public that the lawyer is admitted

10 to practice law in this jurisdiction.

11
12 **Exhibit A** (proposed NRPC 5.5(d)(2) (emphasis added)). This will allow a
13 non-Nevada attorney to have a *home* office or otherwise reside here while remotely
14 practicing the law of his or her jurisdiction and still prevent the non-Nevada attorney
15 from soliciting clients within Nevada and holding himself or herself out to the
16 public as a Nevada attorney.

17 These proposed amendments to NRPC 5.5 are necessary to fully permit
18 remote work by harmonizing the NRPCs with the SCR. They will ensure non-
19 Nevada attorneys are not subject to disciplinary sanctions solely for engaging in this
20 increasingly common practice.

21 In sum, the Board requests that the Court place this matter on its
22 administrative docket, hold such hearings as it deems necessary to secure input from
23 the Bar, and approve the proposed adoption of SCR 42.2 and amendments to NRPC
24 5.5.

1 Respectfully submitted this 25th day of September 2026.

2
3 STATE BAR OF NEVADA
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5
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EXHIBIT A

Proposed amendment to Nevada Rule of Professional Conduct 5.5:

Rule 5.5. Unauthorized Practice of Law.

(a) **General rule.** A lawyer shall not:

(1) Practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(2) Assist another person in the unauthorized practice of law.

(b) **Exceptions.** A lawyer who is not admitted in this jurisdiction, but who is admitted and in good standing in another jurisdiction of the United States, does not engage in the unauthorized practice of law in this jurisdiction when:

(1) The lawyer is authorized to appear before a tribunal in this jurisdiction by law or order of the tribunal or is preparing for a proceeding in which the lawyer reasonably expects to be so authorized;

(2) The lawyer participates in this jurisdiction in investigation and discovery incident to litigation that is pending or anticipated to be instituted in a jurisdiction in which the lawyer is admitted to practice;

(3) The lawyer is an employee of a client and is acting on behalf of the client or, in connection with the client's matters, on behalf of the client's other employees, or its commonly owned organizational affiliates in matters related to the business of the employer, provided that the lawyer is acting in this jurisdiction on an occasional basis and not as a regular or repetitive course of business in this jurisdiction;

(4) The lawyer is acting with respect to a matter that is incident to work being performed in a jurisdiction in which the lawyer is admitted, provided that the lawyer is acting in this jurisdiction on an occasional basis and not as a regular or repetitive course of business in this jurisdiction;

(5) The lawyer is engaged in the occasional representation of a client in association with a lawyer who is admitted in this jurisdiction and who has actual responsibility for the representation and actively participates in the representation, provided that the out-of-state lawyer's representation of the client is not part of a regular or repetitive course of practice in this jurisdiction;

(6) The lawyer is representing a client, on an occasional basis and not as part of a regular or repetitive course of practice in this jurisdiction, in areas governed primarily by federal law, international law, or the law of a foreign nation; ~~or~~

(7) The lawyer is acting as an arbitrator, mediator, or impartial third party in an alternative dispute resolution proceeding; ~~or~~

(8) The lawyer is physically located in this jurisdiction and remotely engages in the practice of law as authorized under the laws of the jurisdiction in which the lawyer is admitted, so long as the lawyer does not establish a public-facing office in this jurisdiction and complies with paragraph (d)(2)(ii) and (iii) of this Rule.

(c) **Interaction with Supreme Court Rule 42.** Notwithstanding the provisions of paragraph (b) of this Rule, a lawyer who is not admitted to practice in this jurisdiction shall not represent a client in this state in an action or proceeding governed by Supreme Court Rule 42 unless the lawyer has been authorized to appear under Supreme Court Rule 42 or reasonably expects to be so authorized.

(d) **Limitations.**

(1) No lawyer is authorized to provide legal services under this Rule if the lawyer:

(i) Is an inactive or suspended member of the State Bar of Nevada, or has been disbarred or has received a disciplinary resignation from the State Bar of Nevada; or

(ii) Has previously been disciplined or held in contempt by reason of misconduct committed while engaged in the practice of law permitted under this Rule.

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

(i) Establish an office or other regular presence in this jurisdiction for the practice of law unless the lawyer is remotely practicing law consistent with paragraph (b)(8) of this Rule;

(ii) Solicit clients in this jurisdiction; or

(iii) Represent or hold out to the public that the lawyer is admitted to practice law in this jurisdiction.

(e) **Conduct and discipline.** A lawyer admitted to practice in another jurisdiction of the United States who acts in this jurisdiction pursuant to paragraph (b) of this Rule shall be subject to the Nevada Rules of Professional Conduct and the disciplinary jurisdiction of the Supreme Court of Nevada and the State Bar of Nevada as provided in Supreme Court Rule 99.

Proposed new Supreme Court Rule 42.2:

Rule 42.2. Remote practice by attorneys not admitted in Nevada.

If a lawyer is physically located in this jurisdiction and remotely engages in the practice of law as authorized under the laws of another jurisdiction in which the lawyer is admitted, such conduct does not constitute the practice of law in this jurisdiction, so long as the lawyer does not (i) establish a public-facing office in this jurisdiction, (ii) solicit clients in this jurisdiction, or (iii) hold themselves out directly or impliedly as authorized to practice law in this jurisdiction.

EXHIBIT B

Proposed amendment to Nevada Rule of Professional Conduct 5.5:

Rule 5.5. Unauthorized Practice of Law.

(a) **General rule.** A lawyer shall not:

(1) Practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(2) Assist another person in the unauthorized practice of law.

(b) **Exceptions.** A lawyer who is not admitted in this jurisdiction, but who is admitted and in good standing in another jurisdiction of the United States, does not engage in the unauthorized practice of law in this jurisdiction when:

(1) The lawyer is authorized to appear before a tribunal in this jurisdiction by law or order of the tribunal or is preparing for a proceeding in which the lawyer reasonably expects to be so authorized;

(2) The lawyer participates in this jurisdiction in investigation and discovery incident to litigation that is pending or anticipated to be instituted in a jurisdiction in which the lawyer is admitted to practice;

(3) The lawyer is an employee of a client and is acting on behalf of the client or, in connection with the client's matters, on behalf of the client's other employees, or its commonly owned organizational affiliates in matters related to the business of the employer, provided that the lawyer is acting in this jurisdiction on an occasional basis and not as a regular or repetitive course of business in this jurisdiction;

(4) The lawyer is acting with respect to a matter that is incident to work being performed in a jurisdiction in which the lawyer is admitted, provided that the lawyer is acting in this jurisdiction on an occasional basis and not as a regular or repetitive course of business in this jurisdiction;

(5) The lawyer is engaged in the occasional representation of a client in association with a lawyer who is admitted in this jurisdiction and who has actual responsibility for the representation and actively participates in the representation, provided that the out-of-state lawyer's representation of the client is not part of a regular or repetitive course of practice in this jurisdiction;

(6) The lawyer is representing a client, on an occasional basis and not as part of a regular or repetitive course of practice in this jurisdiction, in areas governed primarily by federal law, international law, or the law of a foreign nation;

(7) The lawyer is acting as an arbitrator, mediator, or impartial third party in an alternative dispute resolution proceeding; or

(8) The lawyer is physically located in this jurisdiction and remotely engages in the practice of law as authorized under the laws of the jurisdiction in which the lawyer is admitted, so long as the lawyer does not establish a public-facing office in this jurisdiction and complies with paragraph (d)(2)(ii) and (iii) of this Rule.

(c) **Interaction with Supreme Court Rule 42.** Notwithstanding the provisions of paragraph (b) of this Rule, a lawyer who is not admitted to practice in this jurisdiction shall not represent a client in this state in an action or proceeding governed by Supreme Court Rule 42 unless the lawyer has been authorized to appear under Supreme Court Rule 42 or reasonably expects to be so authorized.

(d) **Limitations.**

(1) No lawyer is authorized to provide legal services under this Rule if the lawyer:

(i) Is an inactive or suspended member of the State Bar of Nevada, or has been disbarred or has received a disciplinary resignation from the State Bar of Nevada; or

(ii) Has previously been disciplined or held in contempt by reason of misconduct committed while engaged in the practice of law permitted under this Rule.

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

(i) Establish an office or other regular presence in this jurisdiction for the practice of law unless the lawyer is remotely practicing law consistent with paragraph (b)(8) of this Rule;

(ii) Solicit clients in this jurisdiction; or

(iii) Represent or hold out to the public that the lawyer is admitted to practice law in this jurisdiction.

(e) **Conduct and discipline.** A lawyer admitted to practice in another jurisdiction of the United States who acts in this jurisdiction pursuant to paragraph (b) of this Rule shall be subject to the Nevada Rules of Professional Conduct and the disciplinary jurisdiction of the Supreme Court of Nevada and the State Bar of Nevada as provided in Supreme Court Rule 99.

Proposed new Supreme Court Rule 42.2:

Rule 42.2. Remote practice by attorneys not admitted in Nevada.

If a lawyer is physically located in this jurisdiction and remotely engages in the practice of law as authorized under the laws of another jurisdiction in which the lawyer is admitted, such conduct does not constitute the practice of law in this jurisdiction so long as the lawyer does not

(i) establish a public-facing office in this jurisdiction, (ii) solicit clients in this jurisdiction, or

(iii) hold themselves out directly or impliedly as authorized to practice law in this jurisdiction.

EXHIBIT C

Ethics Advisory Opinion Committee
Opinion No. 19-03
Issued: May 14, 2019

ISSUE

1. If an individual licensed as an active attorney in another state and in good standing in that state establishes a home in Utah and practices law for clients from the state where the attorney is licensed, neither soliciting Utah clients nor establishing a public office in Utah, does the attorney violate the ethical prohibition against the unauthorized practice of law?

OPINION

2. The Utah Rules of Professional Conduct do not prohibit an out-of-state attorney from representing clients from the state where the attorney is licensed even if the out-of-state attorney does so from his private location in Utah. However, in order to avoid engaging in the unauthorized practice of law, the out-of-state attorney who lives in Utah must not establish a public office in Utah or solicit Utah business.

BACKGROUND

3. Today, given electronic means of communication and legal research, attorneys can practice law “virtually” from any location. This can make it possible for attorneys licensed in other states to reside in Utah, but maintain a practice for clients from the states where they are licensed. For example:

- An attorney from New York may decide to semi-retire in St. George, Utah, but wish to continue providing some legal services for his established New York clients.

- An attorney from California may relocate to Utah for family reasons (*e.g.*, a spouse has a job in Utah, a parent is ill and needs care) and wish to continue to handle matters for her California clients.

ANALYSIS

4. Rule 5.5 of the Utah Rules of Professional Conduct (the “**URPC**”), which is based upon the Model Rules of Professional Conduct, defines the “unauthorized practice of law,” and Rule 14-802 of the Utah Supreme Court Rules of Professional Practice defines the “practice of law.” In the question posed, the Ethics Advisory Opinion Committee (the “**EAO**C”) takes it as given that the out-of-state lawyer’s activities consist of the “practice of law.”

5. Rule 5.5(a) of the Utah Rules of Professional Conduct provides that a “lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction.” Rule 5.5(b) provides:

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

(b)(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

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

URPC 5.5(b).

6. THE LAW OF LAWYERING explains the meaning and relationship of these two sections:

Rule 5.5(b) . . . elaborates on the prohibition against unauthorized practice of law contained in Rule 5.5(a) as it concerns out-of-state lawyers. Rule 5.5(b)(1) broadly prohibits a lawyer from establishing an office or other ‘systemic and continuous presence’ for practicing law in a jurisdiction in which the lawyer is not licensed.

Geoffrey C. Hazard, Jr., W. William Hodes, Peter R. Jarvis, THE LAW OF LAWYERING § 49.02, at 49-7 (4th ed. 2018).

7. With that as our touchstone, it seems clear that the out-of-state attorney who lives in Utah but continues to handle cases for clients from the state where the attorney is licensed has not established an office or “‘other systemic and continuous presence’ for practicing law in [Utah] a jurisdiction in which the lawyer is not licensed” and is not in violation of Rule 5.5 of the Utah Rules of Professional Conduct.

8. While one could argue that living in Utah while practicing law for out-of-state clients does literally “establish a systematic and continuous presence in this jurisdiction for the practice of law,” and that it does not have to be “for the practice of law IN UTAH,” that reading finds no support in case law or commentary.

9. In *In re: Discipline of Jardine*, Utah attorney Nathan Jardine had been suspended from the practice of law in Utah for eighteen months. 2015 UT 51, ¶ 1, 353 P.3d 154. He sought reinstatement, but the Office of Professional Conduct argued against reinstatement because he had violated Rule 14-525(e)(1) of the Supreme Court Rules of Professional Practice by engaging in the unauthorized practice of law while he was suspended. 2015 UT 51, ¶¶ 6, 20. The disciplinary order allowed Mr. Jardine “with the consent of the client after full disclosure, [to] wind up or complete any matters pending on the date of entry of the order,” but “Mr. Jardine never informed [the client] that he was suspended, nor did he wind up his participation in the matter.” *Id.* ¶¶ 8-9 (quotation omitted). Instead, he continued to advise the client and sent a demand letter on the client’s behalf, giving his Utah address but indicating California licensure. *Id.* ¶ 9. Mr. Jardine argued that he did not engage in the unauthorized practice of law because this matter was for an Alaska resident and the resulting case was filed in an Idaho court. *Id.* ¶ 22.

Nevertheless, the Utah Supreme Court found that Mr. Jardine engaged in the unauthorized practice of law in Utah, in violation of his disciplinary order, reasoning: “The disciplinary order expressly prohibited Mr. Jardine from ‘performing *any* legal services for others’ or ‘giving legal advice to others’ within the State of Utah.” *Id.* (emphasis added). All of the work Mr. Jardine performed for the Alaska client was performed in Mr. Jardine’s Utah office, Mr. Jardine’s text messages were made from Utah, and Mr. Jardine’s demand letter listed his Utah address. *Id.*

10. *In re Jardine* does not control the question posed. Not only did the Utah Supreme Court analyze the “unauthorized practice of law” in the context of a suspended Utah attorney violating a disciplinary order that forbid him from performing *any* legal services whatsoever for others, but Mr. Jardine was continuing his legal work out of a Utah office and using a Utah business address. The question posed here to the EAOB deals with attorneys in good standing in other states who simply establish a residence in Utah and continue to provide legal work to out-of-state clients from their private Utah residence.

11. We can find no case where an attorney has been disciplined for practicing law out of a private residence for out-of-state clients located in the state where the attorney is licensed. Indeed, the United States Supreme Court held in *New Hampshire v. Piper*, 470 U.S. 274 (1985), that a New Hampshire Supreme Court rule limiting bar admission to New Hampshire residents violated the rights of a Vermont resident seeking admission under the Privileges and Immunities Clause of the U.S. Constitution. *Id.* at 275-76, 288. Thus, there can be no prohibition on an attorney living in one state and being a member of the bar of the another state and practicing law in that other state.

12. Rather, the concern is that an attorney not establish an office or public presence in a jurisdiction where the attorney is not admitted, and that concern is based upon the need to

protect the interests of potential clients in that jurisdiction. In *Gould v. Harkness*, 470 F. Supp. 2d 1357 (S.D. Fla. 2006), a New York attorney sought to establish an office and advertise his presence in Florida, but advertise “New York Legal Matters Only” or “Federal Administrative Practice.” *Id.* at 1358. The case concerned whether his First Amendment right to freedom of commercial speech under the United States Constitution was violated by the Florida Bar’s prohibition on such advertisements. *Id.* at 1358-59. The *Gould* court held that the Florida Bar was entitled to prohibit such advertisements in order to protect the interests of the public—the residents of Florida. *Id.* at 1364.

13. Similarly, in *In re Estate of Condon*, 76 Cal. Rptr. 2d 933 (Cal. Ct. App. 1998), the court approved payment of attorney fees to a Colorado attorney who handled a California probate matter for a co-executor who lived in Colorado. *Id.* at 924. The *Condon* court held that the unauthorized practice of law statute “does not proscribe an award of attorney fees to an out-of-state attorney for services rendered on behalf of an out-of-state client regardless of whether the attorney is either physically or virtually present within the state of California.” *Id.* at 926.

Here, too, the *Condon* court highlighted concern for in-state California clients:

In the real world of 1998 we do not live or do business in isolation within strict geopolitical boundaries. Social interaction and the conduct of business transcends state and national boundaries; it is truly global. A tension is thus created between the right of a party to have counsel of his or her choice and the right of each geopolitical entity to control the activities of those who practice law within its borders. In resolving the issue ... it is useful to look to the reason underlying the proscription [of the unauthorized practice of law....] [T]he rationale is to protect California citizens from incompetent attorneys....

Id. at 927.

14. An interesting Ohio Supreme Court case further supports this Opinion that an out-of-state attorney practicing law for clients from the state where he is licensed should not be seen to violate Rule 5.5 of the Utah Rules of Professional Conduct’s prohibition on the unauthorized

practice of law. In *In re Application of Jones*, 2018 WL 5076017 (Ohio Oct. 17, 2018), Alice Jones was admitted to the Kentucky bar and practiced law in Kentucky for six years. *Id.* at *1-2. Her Kentucky firm merged with a firm having an office in Cincinnati, Ohio. *Id.* at *1. For personal reasons, Ms. Jones moved to Cincinnati and transferred to her firm's Cincinnati office. *Id.* at *2. She applied for admission to the Ohio bar the month before she moved. *Id.* While awaiting the Ohio Bar's decision, she practiced law exclusively on matters related to pending or potential proceedings in Kentucky. *Id.* Nevertheless, the Board of Commissioners on Character and Fitness chose to investigate Ms. Jones for the unauthorized practice of law and voted to deny her admission to the Ohio Bar. *Id.*

15. The Ohio Supreme Court unanimously reversed this decision. *Id.* at *4. A majority of the *Jones* court held that Ms. Jones' activities did not run afoul of the unauthorized practice of law provision because Rule 5.5(c)(2) of the Ohio Rules of Professional Conduct permitted her to provide legal services on a "temporary basis" while she awaited admission to the Ohio bar. *Id.* at *3. However, three of the seven Ohio Supreme Court justices concurred on a different basis. *Id.* at *5 (DeWine, J., concurring). They found that denial of Jones' application on these facts would violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution as well as the Ohio Constitution's related provisions. *Id.* at *9 (DeWine, J., concurring). Both constitutions protected one's right to pursue her profession, subject to governmental regulation only to the extent necessary to promote the health, safety, morals, or general welfare of society, provided the legislation is not arbitrary or unreasonable. *Id.* at *7-8 (DeWine, J., concurring). The concurring opinion noted that "the constitutional question here turns on identifying Ohio's interest in prohibiting Jones from representing her Kentucky clients while working in a Cincinnati office. The short answer is that there is none." *Id.* at *8 (DeWine,

J., concurring). Two state interests supported attorney regulation—attorneys’ roles in administering justice through the state’s court system and “the protection of the public.” *Id.* (DeWine, J., concurring).

But when applied to a lawyer who is not practicing Ohio law or appearing in Ohio courts, Prof.Cond.R. 5.5(b) serves no state interest. Plainly, as applied to such a lawyer, the rule does not further the state’s interest in protecting the integrity of our court system. Jones, and others like her, are not practicing in Ohio courts. Nor does application of the rule to such lawyer serve the state’s interest in protecting the Ohio public. Jones and others in her situation are not providing services to or holding themselves out as lawyers to the Ohio public. Jones’s conduct as a lawyer is regulated by the state of Kentucky—the state in whose forums she appears.

Id. at *9 (DeWine, J., concurring). The three concurring Ohio Supreme Court justices concluded that Rule 5.5(b) of the Ohio Rules of Professional Conduct, as interpreted by the Ohio Board of Commissioners, would be unconstitutional when applied to Jones and others similarly situated. *Id.* (DeWine, J., concurring).

16. The question posed here is just as clear as the question before the Ohio Supreme Court: what interest does the Utah State Bar have in regulating an out-of-state lawyer’s practice for out-of-state clients simply because he has a private home in Utah? And the answer is the same—none.

17. Finally, a perusal of various other authorities uncovers no case in which an attorney was disciplined for living in a state where he was not licensed while continuing to practice law for clients from the state where he was licensed. See RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 3 *Jurisdictional Scope of the Practice of Law by a Lawyer* (2000); ROY D. SIMON, SIMON’S NY RULES OF PROF. COND. § 5.5:6 (Dec. 2018); and *What Constitutes “Unauthorized Practice of Law” by Out-of-State Counsel*, 83 A.L.R. 5th 497 (2000).

CONCLUSION

18. Accordingly, the EAOB interprets Rule 5.5(b) of the Utah Rules of Professional Conduct in a way consistent with the Due Process and Privileges and Immunities Clauses of the Fourteenth Amendment to the United States Constitution; the Privileges and Immunities Clause of Article IV, Section 2 of the United States Constitution; Article 1, Section 7 of the Due Process Clause and Article 1, Section 24 of the Uniform Operation of the Laws Clause of the Utah Constitution; and all commentators and all persuasive authority in support of permitting an out-of-state attorney to establish a private residence in Utah and to practice law from that residence for clients from the state where the attorney is licensed.

EXHIBIT D

ABA Formal Op. 20-495

American Bar Association Formal Ethics Opinion 20-495

American Bar Association

LAWYERS WORKING REMOTELY

December 16, 2020

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. This practice may include the law of their licensing jurisdiction or other law as permitted by ABA Model Rule 5.5(c) or (d), including, for instance, temporary practice involving other states' or federal laws. Having local contact information on websites, letterhead, business cards, advertising, or the like would improperly establish a local office or local presence under the ABA Model Rules. [FN1]

Introduction

Lawyers, like others, have more frequently been working remotely: practicing law mainly through electronic means. Technology has made it possible for a lawyer to practice virtually in a jurisdiction where the lawyer is licensed, providing legal services to residents of that jurisdiction, even though the lawyer may be physically located in a different jurisdiction where the lawyer is not licensed. A lawyer's residence may not be the same jurisdiction where a lawyer is licensed. Thus, some lawyers have either chosen or been forced to remotely carry on their practice of the law of the jurisdiction or jurisdictions in which they are licensed while being physically present in a jurisdiction in which they are not licensed to practice. Lawyers may ethically engage in practicing law as authorized by their licensing jurisdiction(s) while being physically present in a jurisdiction in which they are not admitted under specific circumstances enumerated in this opinion.

Analysis

ABA Model Rule 5.5(a) prohibits lawyers from engaging in the unauthorized practice of law: “[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” unless authorized by the rules or law to do so. It is not this Committee's purview to determine matters of law; thus, this Committee will not opine whether working remotely by practicing the law of one's licensing jurisdiction in a particular jurisdiction where one is not licensed constitutes the unauthorized practice of law under the law of that jurisdiction. If 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.

Absent such a determination, this Committee's opinion is that a lawyer may practice law pursuant to the jurisdiction(s) in which the lawyer is licensed (the “licensing jurisdiction”) even from a physical location where the lawyer is not licensed (the “local jurisdiction”) under specific parameters. Authorization in the licensing jurisdiction can be by licensure of the highest court of a state or a federal court. For purposes of this opinion, practice of the licensing jurisdiction law may include the law of the licensing jurisdiction and other law as permitted by ABA Model Rule 5.5(c) or (d), including, for instance, temporary practice involving other states' or federal laws. In other words, the lawyer may practice from home (or other remote location) whatever law(s) the lawyer is authorized to practice by the lawyer's licensing jurisdiction, as they would from their office in the licensing jurisdiction. As recognized by Rule 5.5(d)(2), a federal agency may also authorize lawyers to appear before it in any U.S.

jurisdiction. The rules are considered rules of reason and their purpose must be examined to determine their meaning. Comment [2] indicates the purpose of the rule: “limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons.” A local jurisdiction has no real interest in prohibiting a lawyer from practicing the law of a jurisdiction in which that lawyer is licensed and therefore qualified to represent clients in that jurisdiction. A local jurisdiction, however, does have an interest in ensuring lawyers practicing in its jurisdiction are competent to do so.

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.” [FN2] 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. [FN3] 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 an office or a systematic and continuous presence in the local jurisdiction for the practice of law.

Subparagraph (b)(2) prohibits a lawyer from “hold[ing] out to the public or otherwise represent[ing] that the lawyer is admitted to practice law in [the] jurisdiction” in which the lawyer is not admitted to practice. A lawyer practicing remotely from a local jurisdiction may not state or imply that the lawyer is licensed to practice law in the local jurisdiction. Again, information provided on websites, letterhead, business cards, or advertising would be indicia of whether a lawyer is “holding out” as practicing law in the local jurisdiction. If the lawyer's website, letterhead, business cards, advertising, and the like clearly indicate the lawyer's jurisdictional limitations, do not provide an address in the local jurisdiction, and do not offer to provide legal services in the local jurisdiction, the lawyer has not “held out” as prohibited by the rule.

A handful of state opinions that have addressed the issue agree. Maine Ethics Opinion 189 (2005) finds:

Where the lawyer's practice is located in another state and where the lawyer is working on office matters from afar, we would conclude that the lawyer is not engaged in the unauthorized practice of law. We would reach the same conclusion with respect to a lawyer who lived in Maine and worked out of his or her home for the benefit of a law firm and clients located in some other jurisdiction. In neither case has the lawyer established a professional office in Maine, established some other systematic and continuous presence in Maine, held himself or herself out to the public as admitted in Maine, or even provided legal services in Maine where the lawyer is working for the benefit of a non-Maine client on a matter focused in a jurisdiction other than Maine.

Similarly, Utah Ethics Opinion 19-03 (2019) states: “what interest does the Utah State Bar have in regulating an out-of-state lawyer's practice for out-of-state clients simply because he has a private home in Utah? And the answer is the same--none.”

In addition to the above, Model Rule 5.5(c)(4) provides that lawyers admitted to practice in another United States jurisdiction and not disbarred or suspended from practice in any jurisdiction may provide legal services on a temporary basis in the local jurisdiction that arise out of or reasonably relate to the lawyer's practice in a jurisdiction where the lawyer is admitted to practice. Comment [6] notes that there is no single definition for what is temporary and that it may include services that are provided on a recurring basis or for an extended period of time. For example, in a pandemic that results in safety measures--regardless of whether the safety measures are governmentally mandated--that include physical closure or limited use of law offices, lawyers may temporarily be working remotely. How long that temporary period lasts could vary significantly based on the need to address the pandemic. And Model Rule 5.5(d)(2) permits a lawyer admitted in another jurisdiction to provide legal services in the local jurisdiction that they are authorized to provide by federal or other law or rule to provide. A lawyer

may be subject to discipline in the local jurisdiction, as well as the licensing jurisdiction, by providing services in the local jurisdiction under Model Rule 8.5(a).

Conclusion

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.

[FN1]. This opinion is based on the ABA Model Rules of Professional Conduct as amended by the ABA House of Delegates through August 2020. The laws, court rules, regulations, rules of professional conduct, and opinions promulgated in individual jurisdictions are controlling.

[FN2]. Dictionary.com, <https://www.dictionary.com/browse/establish?s=t> (last visited Dec. 14, 2020).

[FN3]. To avoid confusion of clients and others who might presume the lawyer is regularly present at a physical address in the licensing jurisdiction, the lawyer might include a notation in each publication of the address such as “by appointment only” or “for mail delivery.”

ABA Formal Op. 20-495

EXHIBIT E

OPINION 2021-1

[Issue date: August 2021]

ISSUE:

Is a lawyer, who is licensed in one or more jurisdictions but practices law remotely from another jurisdiction where the lawyer resides and is not licensed, engaged in the unauthorized practice of law?

DIGEST:

A lawyer who is not licensed in California, and who does not advertise or otherwise hold himself or herself out as a licensed California lawyer, does not establish an office or other systematic or continuous presence for the practice of law in California, and does not represent a California person or entity, but is merely physically present in California while using modern technology to remotely practice law in compliance with the rules of the jurisdiction where the lawyer is licensed, should not be held in violation of California's Unauthorized Practice of Law ("UPL") rule and laws, specifically California Rules of Professional Conduct ("CRPC") Rule 5.5, or the State Bar Act, Business & Professions ("B&P") Code §§6125-6126. If such a lawyer does represent a California person or entity, whether the lawyer violates the UPL rule and laws will depend on the nature of the representation, whether the representation complies with the regulations of the jurisdiction where the lawyer is licensed, the role of other California lawyers in the representation, and other factors relevant to whether the California client is protected consistent with the purpose of the UPL rule and laws.

A lawyer who is licensed to practice law in California, but who resides in another jurisdiction where the lawyer is not licensed while continuing to remotely practice law under the lawyer's California license, must adhere to California's rules and law as required to maintain a California law license and must also comply with the applicable regulations of the jurisdiction where the lawyer resides but is not licensed. CRPC Rule 5.5(a); see also ABA Model Rule 5.5(a). A California lawyer who fails to comply with that jurisdiction's UPL regulations could be at risk for criminal and/or civil liability and could also be at risk for discipline for violation of CRPC Rule 5.5(a).

AUTHORITIES INTERPRETED:

California Rules of Professional Conduct, rule 5.5. Business and Professions Code sections 6125, 6126.

SCENARIO 1 FACTS:

Lawyer is licensed to practice law in a jurisdiction outside of California ("State A"). Lawyer is not licensed in California. Lawyer works for a law firm based in State A ("State A Firm"). State A Firm has no offices in California and has no plan to expand its business to California. Lawyer wants to move to California and reside there permanently for personal reasons. Lawyer and State A Firm want Lawyer to continue to practice law remotely on behalf of State A Firm from California. Lawyer's professional office will continue to be located at State A Firm's business address in State A. Lawyer and State A Firm will not advertise or otherwise hold Lawyer out as admitted to practice law in California and will make clear that Lawyer is only licensed in State A. Lawyer's work with State A Firm will continue to be limited to representing clients in accord with the rules of State A where Lawyer is licensed. Therefore, Lawyer's work for State A Firm will remain the same as it has been for the span of Lawyer's employment with State A Firm while Lawyer was physically working for State A Firm in State A, except for the fact that Lawyer will now be physically residing in California and using modern technology to work remotely for State A Firm.

Can Lawyer, who is a licensed lawyer in good standing in State A, but who is not licensed in California, continue to practice in accordance with Lawyer's State A law license from Lawyer's home in California without violating CRPC Rule 5.5 or B&P Code §§6125-6126?

SCENARIO 1 ANSWER:

Yes, so long as certain precautions are followed. Lawyer must not (1) “practice law in California” within the meaning of B&P Code Section 6125; (2) establish an office or a “systematic or continuous presence” “in California” for “the practice of law” in violation of CRPC Rule 5.5(b)(1); or (3) “hold out to the public or otherwise represent that the lawyer is admitted to practice law in California” in violation of CRPC Rule 5.5(b)(2). The determination of these questions depends on a number of factors, including the extent to which Lawyer’s activities require the protection of California persons or entities from incompetent or unethical attorneys.

- **Practice of Law in California (B&P Code Section 6125)**

B&P Code section 6125 states: “No person shall *practice law in California* unless the person is an active licensee of the State Bar.” A violation of this law is a crime, punishable by up to one year in county jail and a fine of \$1,000. B&P C. §6126(a). It may also preclude an unlicensed lawyer from recovering legal fees for services provided. *Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal. 4th 119, 127 (*Birbrower*).

Rules 9.40-9.49 of the California Rules of Court (CRC) provide exceptions to California’s UPL mandates and allow certain persons who are not licensed in California to temporarily practice law in the state if the express requirements are met. These exceptions are for Pro Hac Vice Counsel (CRC 9.40); Appearances by Military Counsel (CRC 9.41); Registered Military Spouse Attorney (CRC 9.41.1); Certified Law Students (CRC 9.42); Out-of-State Attorney Arbitration Counsel (CRC 9.43); Registered Foreign Legal Consultant (CRC 9.44); Registered Legal Aid Attorneys (CRC 9.45); Registered In-House Counsel (CRC 9.46); Attorneys Practicing Law Temporarily in California As Part of Litigation (CRC 9.47); Nonlitigating Attorneys Temporarily in California to Provide Legal Services (CRC 9.48); and Provisional Licensure of 2020 Law School Graduates (CRC 9.49).

What constitutes “temporary” practice under these rules is a matter of debate [\[1\]](#), but the rules do not apply here anyway, because the facts in Scenario 1 state that Lawyer will practice law as permitted under Lawyer’s State A law license while residing permanently in California. CRC 9.40, 9.47 and 9.48 specifically prohibit non-California licensed lawyers who are a resident of California from qualifying to “practice law in California” under these rules. CRC 9.40(a)(1); 9.47(d)(3); 9.48(d)(3).

The question, then, is whether Lawyer is engaged in the “practice of law in California” within the meaning of B&P Code section 6125. “Practicing law” includes appearing in court, providing legal advice and counsel, and preparing legal instruments and contracts by which legal rights are secured, even if the matter is not in court. *Estate of Condon* (1998) 65 Cal.App.4th 1138, 1142-43 (*Condon*). Although previous opinions had arrived at this meaning of the “practice of law,” it was the California Supreme Court’s decision in *Birbrower, supra*, 17 Cal. 4th 119, that first defined what is meant by the practice of law “in California” as used in B&P Code section 6125.

In *Birbrower*, New York lawyers resided in New York but traveled several times to California while representing a California client against a California opponent in a California-based arbitration governed by California law. While in California, they advised the client, negotiated with the opponent, and initiated an arbitration. No California lawyer was involved in the representation.

The California Supreme Court held that the law firm was barred from recovering fees for services performed in California because it had engaged in “unauthorized practice *in California* on more than a limited basis, and no firm attorney engaged in that practice was an active member of the California state bar.” 17 Cal. 4th at 131 (emphasis in original); see also *id.* at 135, 136 (referring to the firm’s “extensive” practice in California). The Court further held that the doctrine of unauthorized practice did not bar recovery for “the limited legal services the firm performed for [the California client] in New York to the extent they did not constitute practicing law in California.” *Id.* at 137.

Although the New York lawyers in *Birbrower* had practiced law while physically present in California, the Court made clear that physical presence in the state is not needed for a finding of unauthorized practice. 17 Cal. 4th at 128. In dictum, the Court stated that a lawyer who did not physically practice law in California might do so virtually, by “advising a California client on California law in connection with a California legal dispute by telephone, fax, computer or other modern technological means.” *Id.* at 128-29. On the other hand, the Court “reject[ed] the notion that a person automatically practices law ‘in California’ whenever that person practices California law anywhere, or ‘virtually’ enters the state by telephone, fax, e-mail, or satellite.” *Id.* at 128-29. The Court ruled:

the practice of law “in California” entails sufficient contact with the California client to render the nature of the legal service a clear legal representation. In addition to a quantitative analysis, we must consider the nature of the unlicensed lawyer’s activities in the state. Mere fortuitous or attenuated contacts will not sustain a finding that the unlicensed lawyer practiced law “in California.” The primary inquiry is whether the unlicensed lawyer engaged in *sufficient activities in the state, or created a continuing relationship with the California client* that included legal duties and obligations.

Id. at 128, emphasis added. The purpose of B&P Code section 6125, the Court noted, is “to protect California citizens from incompetent attorneys.” *Id.* at 132.

Shortly after *Birbrower*, the California Court of Appeal decided *Condon*, *supra*, 65 Cal. App. 4th 1138, upon remand from the California Supreme Court with directions to vacate and reconsider a prior decision in light of *Birbrower*. In *Condon*, a Colorado lawyer represented the Colorado-based executor of a California decedent’s will that devised California property and was the subject of proceedings in a California court. The client was represented in all court proceedings by California counsel. The lawyer’s representation involved extensive virtual contact with California and a modest amount of practice while physically present there. Despite the strong California connections in the case and the lawyer’s work while physically present in California, the Court of Appeal held that because the lawyer’s client was a Colorado resident, none of the lawyer’s conduct violated the UPL statute. For the *Condon* court, the essential ingredient in the *Birbrower* rule was whether the “client is a ‘California client,’ one that either resides in or has its principal place of business in California. This conclusion is not only logical, it comports with the reason underlying the proscription of section 6125.” (*Condon*, *supra*, 65 Cal.App.4th at 1145.) Further, the court observed:

In resolving the issue of applicability of section 6125 it is useful to look to the reason underlying the proscription of section 6125. ... If indeed the goal of the statute is to protect California citizens from the incompetent and unscrupulous practitioner (licensed or unlicensed), it simply should *make no difference whether the out-of-state lawyer is practicing California law or some other breed* since the impact of incompetence on the client is precisely the same.

Id. at 1147, emphasis added.

The court in *Condon* concluded: “It is therefore obvious that, given the facts before us, the *client’s* residence or its principal place of business is determinative of the question of whether the practice is proscribed by section 6125. Clearly the state of California has no interest in disciplining an out of state attorney practicing law on behalf of a client residing in the lawyer’s home state.” *Condon*, *supra*, 65 Cal.App.4th at 1147, emphasis added.

Neither *Birbrower* nor *Condon* involved a non-California licensed lawyer residing in California. Nonetheless, *Birbrower* and *Condon* underscore relevant principles concerning the application of section 6125: (1) the physical presence of the lawyer in California is neither necessary nor sufficient for a determination that a lawyer is practicing law in the state; (2) of primary importance is whether the client resides in California, since the statutory purpose of section 6125 is to protect Californians; and (3) the law at issue in the representation is not necessarily decisive, particularly if, as in *Condon*, a California lawyer is handling the California law aspects of the representation. [2]

Here, Lawyer’s residence in California would be a factor in deciding whether the Lawyer is practicing law in California, but it would not be determinative. Instead, the “primary inquiry is whether the unlicensed lawyer engaged in *sufficient activities in the state*, or created a continuing relationship with the California client that included legal duties and obligations.” *Birbrower*, *supra*, 17 Cal.4th at 128, emphasis added. Under the facts in Scenario 1, Lawyer has no law office in California, is not holding out as a lawyer licensed in California, and is not soliciting or representing California persons or entities. Given these facts, and provided Lawyer is properly practicing law as allowed under the jurisdiction where Lawyer is licensed, Lawyer is likely not practicing law in California under *Birbrower* or *Condon* and California should have no interest in disciplining Lawyer.

A closer and more complicated question would arise if Lawyer began working on matters for one or more clients of State A Firm who are California persons or entities. [3] The answer may depend on the nature of the representation, whether the representation complies with the regulations of the jurisdiction where the lawyer is licensed, the communications between the lawyer and the client concerning where the lawyer is licensed and any limitation on the lawyer’s conduct, the role of other California lawyers in the representation, and the frequency and significance of such representations in the lawyer’s practice.

The initial issue would be the nature of the representation. If a lawyer engaged in activities in California similar to those of the lawyers in *Birbrower* – involving both a California client and a matter located in California and controlled by California law – and there is no California lawyer involved in advising the California client, then it is likely the lawyer would be found to be practicing law in California. Similarly, if a lawyer reached out to provide extensive advice to an individual California tort claimant about how to litigate or settle a dispute centered in California and governed by California law (and was not permitted to practice law in California temporarily under CRC Rules 9.40-9.49), the lawyer would more likely be found to be practicing law in California than if the lawyer was, for example, a Delaware-admitted corporate law specialist who was approached by the general counsel of a California-based Delaware LLC to advise about an internal dispute governed by Delaware law.

The role of any licensed California lawyer in the representation would also be considered. *Condon* makes clear that, even in matters with a significant California dimension, the presence of California licensed counsel who assumes responsibility for California aspects of the representation can help to avoid a finding of unauthorized practice. See *Winterrowd v. American*

General Annuity Ins. Co., 556 F.3d 815, 821-22 (9th Cir. 2009) (out of state work for a California client on a California federal court lawsuit was not the practice of law in California, when the lawyer was retained after being approached by California counsel of record, who handled all communications with the client, and the decisive issue arose under federal law).

In addition, the determination of whether a lawyer is practicing law in California may turn on the context of the inquiry. *Birbrower* and *Condon* examined whether an attorney was practicing law in California with respect to a particular client in the context of a fee dispute. The State Bar determination of whether a lawyer was practicing law in California, or such a determination in a prosecution under B&P Code section 6125, would likely look at the specific matter(s) in which the lawyer is advising the California person or entity and the type of advice provided, but it might also take into account the totality of the lawyer's practice. The communications between the lawyer and the client may also be assessed to determine whether, when selecting the lawyer, the client knew where the lawyer was licensed and what, if any, relevant limitation on the lawyer's conduct could impact the representation. See also CRPC Rule 1.4(a)(4).

More generally, in line with the holdings in *Birbrower* and *Condon*, if a lawyer was doing nothing more for California persons or entities than the lawyer could permissibly have done when physically in the jurisdiction where the lawyer is licensed in compliance with that jurisdiction's rules and laws (as well as the applicable California rules and laws, including CRC rules 9.40-9.49 where appropriate), the mere fact that the lawyer is living in California for personal reasons while providing those services to California persons or entities might well fall within the rubric of "fortuitous or attenuated contacts" that do not rise to the level of practicing law in California in violation of section 6125. See *Birbrower*, *supra*, 17 Cal.4th at 128. After all, as *Condon* stated over two decades ago, "[i]t is insular to assume that only California lawyers can be trained in California law. Surely the citizens of states outside of California should not have to retain California lawyers to advise them on California law." *Condon*, *supra*, 65 Cal.App.4th at 1147. Given the technological developments since *Condon*, and particularly the recent advent of remote representation in response to the COVID-19 pandemic, it would not be unreasonable for the courts and the State Bar to decide that the "practice of law in California" turns less on geography and more on the relative risk of harm posed to California individuals and entities.

- **Office or Systematic or Continuous Presence in California for the Practice of Law**

CRPC Rule 5.5(b)(1) provides that a "lawyer who is not admitted to practice law in California shall not[,] except as authorized by these rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law."

The facts in Scenario 1 are clear that neither State A Firm nor Lawyer has established or intends to establish a physical law office in California. It is also clear that Lawyer has not established, and does not intend to establish, a systematic or regular presence in California "for the practice of law." Lawyer is present in California for Lawyer's personal reasons, not to facilitate the practice of law in California or to develop California clientele. Lawyer is merely embracing modern technology to continue Lawyer's State A law practice in compliance with Lawyer's State A law license. Under the facts of Scenario 1, Lawyer is not in violation of CRPC Rule 5.5(b)(1).

This conclusion is consistent with the purpose underlying CRPC Rule 5.5. Because CRPC Rule 5.5(b)(1) by its terms prohibits activities only for lawyers who are "not admitted to practice law in California," the rule is plainly targeting the maintenance in this state of an office or presence for the purpose of "the practice of law" *in California*, not the practice of law in compliance with the applicable regulations of the jurisdiction where a lawyer is licensed. See CRPC Rule 5.5, Comment ("Paragraph (b)(1) prohibits lawyers from practicing law in California unless otherwise entitled to practice law in this state by court rule or other law," citing, e.g., B&P Code section 6125 et seq.) The term "the practice of law" in CRPC Rule 5.5 must logically be construed as consistent with the term "the practice of law in California" in B&P Code section 6125. Given that Lawyer in Scenario 1 is not engaging in "the practice of law in California" within the meaning of B&P Code section 6125 as discussed *supra*, it would be anomalous to deem Lawyer's presence and activities as a violation of CRPC Rule 5.5(b)(1).

Our conclusion is further supported by recent authoritative interpretations of ABA Model Rule 5.5(b)(1), on which CRPC 5.5(b)(1) is based. ABA Model Rule 5.5(b)(1) states that an unlicensed lawyer shall not "establish an office" or "other systematic and continuous presence" in the jurisdiction for the practice of law. [4] ABA Formal Opinion 495 (December 16, 2020) advised 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." The ABA opinion further advised that a systematic and continuous presence in the jurisdiction for the practice of law is not established if "the lawyer is neither practicing the law of the local jurisdiction nor holding out the availability to do so." Under those circumstances, the ABA opinion concluded, the "lawyer's physical presence in the local jurisdiction is incidental; it is not for the practice of law."

Similarly, the Florida Bar's Advisory Opinion #2019-4 (approved by the Florida Supreme Court on May 20, 2021) determined that a lawyer who is licensed in one state, works for a law firm in that state, but permanently lives and works from his home in Florida where the lawyer is not licensed, has not established an "office" or a "systematic or continuous presence" in Florida for the "practice of law" because neither the lawyer nor the firm is holding the lawyer out as a Florida attorney,

soliciting Florida clients, or practicing Florida law. Instead, the lawyer is simply using modern technology to remotely practice the law of the state where he is licensed while living in another state unrelated to the attorney's practice.

Consistent with this analysis, other jurisdictions have found violations of versions of ABA Model Rule 5.5 when out-of-state lawyers systematically reached out to "create" multiple relationships with individual clients in a state where the lawyer was not admitted, and to represent those clients in matters centered in that state. See, e.g., *In re Tonwe*, 929 A.2d 774, 778, 778-89 (Del. 2007) (out-of-state lawyer, who regularly represented in-state clients in in-state matters, and "cultivated a network of in-state contacts" to attract clients, took steps to establish a systematic and continuous presence); *In re Kingsley*, 2008 Del. Lexis 255, 950 A.2d 659 at *13 (Del. 2008) (out-of-state lawyer, who had monthly retainer with in-state accountant to draft documents for in-state clients, established a systematic and continuous presence); Illinois LEO 12-09 (March 2012) (out-of-state lawyer sought work from in-state clients and sought to perform work while present in the state). These cases support the view that versions of ABA Model Rule 5.5, such as CRPC rule 5.5, are centrally aimed at preventing harm to clients in the jurisdiction where the lawyer is not admitted.

- **Holding the Lawyer Out as Admitted to Practice in California**

CRPC Rule 5.5(b)(2) requires that a lawyer who is not licensed in California cannot "hold out to the public or otherwise represent that the lawyer is admitted to practice law in California." B&P Code section 6126 adds that "[a]ny person holding himself or herself out as practicing or entitled to practice law," while not an active licensee of the State Bar, is guilty of a misdemeanor and subject to the same penalty as persons practicing law without a license. B&P C. § 6126(a).

Under the facts of Scenario 1, neither Lawyer nor State A Firm is holding Lawyer out to the public as having a California license or presence. All of Lawyer's and State A Firm's communications about Lawyer or Lawyer's services publicize only the State A contact information and specify that Lawyer is only licensed in State A. All indicia point to Lawyer's practice of law as being in State A, not California. Therefore, under the facts of Scenario 1, Lawyer would not be in violation of CRPC Rule 5.5(b)(2).

- **Protection of the California Public**

As noted, CRPC Rule 5.5 is very similar to ABA Model Rule 5.5 and the versions of Rule 5.5 adopted in Florida and Utah. Ethics opinions from the ABA, Florida, and Utah emphasize that the purpose of such rules is to protect the public. In particular, ABA Formal Opinion 495 (December 16, 2020) advises: "The purpose of [the UPL Rule in ABA 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 Florida Bar's Standing Committee on UPL reasons in its opinion that where the lawyer "is not providing legal services to Florida clients," "no Floridians are being harmed" and so "there are no interests of Floridians that need to be protected[.]" The Utah Ethics Advisory Committee Opinion 19-03 (2019) puts it this way: "what interest does the Utah State Bar have in regulating an out-of-state lawyer's practice for out-of-state clients simply because he has a private home in Utah? And the answer is the same – none." See also Maine Ethics Opinion 189 (2005).

The advice offered in these ethics opinions is consistent with *Birbrower, Condon*, and the B&P Code. Under *Birbrower* and *Condon*, California's overriding purpose for defining and regulating the practice of law in this state is to protect the California public from incompetent, unethical or irresponsible legal representation. *Birbrower, supra*, 17 Cal. 4th at 132; *Condon, supra*, 65 Cal. App. 4th at 1145-47. "Protection of the public . . . shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." B&P Code §6001.1. The State Bar confirms on its website that its mission is public protection. See <http://www.calbar.ca.gov/Public/Free-Legal-Information/FAQ>.

Under the facts of Scenario 1, neither Lawyer nor State A Firm is representing or otherwise holding Lawyer out as a California licensed lawyer to California persons or entities; instead, Lawyer is merely continuing Lawyer's work with State A Firm in accord with the rules of Lawyer's State A license, albeit remotely from a location in California. Neither Lawyer nor State A Firm has a law office in California. All of Lawyer's and State A Firm's communications about Lawyer and Lawyer's services specify that Lawyer is licensed only in State A. The mere fact of Lawyer's residence in California poses no greater risk of harm to a California person or entity than if Lawyer resided in State A. Under these facts, Lawyer is not violating B&P Code sections 6125 or CRPC Rule 5.5(b).

SCENARIO 2 FACTS:

Can Lawyer, who is only licensed to practice law in California, physically reside in State A and ethically practice law as permitted by Lawyer's California law license from Lawyer's State A location?

SCENARIO 2 ANSWER:

It depends on the law of the jurisdiction where Lawyer is residing.

CRPC Rule 5.5(a) states:

A lawyer admitted to practice law in California shall not:

- (1) practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction; or
- (2) knowingly* assist a person* in the unauthorized practice of law in that jurisdiction.

Here, Lawyer would need to analyze State A's rules of professional conduct and any other rules or laws concerning the unauthorized practice of law in State A to determine whether Lawyer is ethically permitted by State A to remotely practice law pursuant to Lawyer's California law license while being physically located in State A without a State A law license. Lawyer should consult applicable ethics opinions, statutes, and rules of professional conduct for State A. Failure to adhere to State A's regulations could be found to violate CRPC Rule 5.5(a).

CONCLUSION:

For the lawyer who is licensed to practice law in a jurisdiction other than California, but who is residing in California while remotely practicing law as authorized by the lawyer's out-of-state law license, the lawyer will not be in violation of CRPC Rule 5.5(b) or B&P Code Sections 6125-6126 if the lawyer complies with the conditions outlined in this opinion. The purpose underlying California UPL regulations is to protect California persons and entities, and under these facts the lawyer does not pose a greater risk of harm to California persons or entities by engaging in his or her practice remotely from California.

For the lawyer who is licensed to practice in California, but who is residing in another jurisdiction where the lawyer is not licensed, the lawyer must not practice law in violation of the regulations of the profession in that jurisdiction, including any rules or laws of the jurisdiction that concern the unauthorized practice of law. The lawyer must also adhere to California's rules and laws as needed to maintain a California law license.

This opinion is issued by the Legal Ethics Committee of the Bar Association of San Francisco. It is advisory only. It is not binding upon the courts, the State Bar of California, its Board of Trustees, any persons, or tribunals charged with regulatory responsibilities, or any licensee of the State Bar.

Footnotes

1. Similar to allowances made in California, ABA Model Rule 5.5(c)(4) provides that lawyers admitted to practice in another United States jurisdiction and not disbarred or suspended from practice in any jurisdiction may provide legal services on a temporary basis in the local jurisdiction that arise out of or reasonably relate to the lawyer's practice in a jurisdiction where the lawyer is admitted to practice. Comment [6] to ABA Model Rule 5.5 notes that there is no single definition for what is temporary and that it may include services that are provided on a recurring basis or for an extended period of time. See ABA Formal Opinion 495 (December 16, 2020), which further discusses the need for lawyers to work remotely as a result of the pandemic and the concern that the time period for this "temporary" need is uncertain.
2. In addition, CRPC Rule 5.5, adopted after *Birbrower and Condon*, prohibits lawyers from engaging in specified activities if they are not entitled to practice law in California. See CRPC Rule 5.5, Comment [1]. These activities may be indicia of the unauthorized practice of law within the meaning of B&P Code section 6125. We discuss CRPC Rule 5.5 *infra*.
3. The facts in Scenario 1 do not involve such a situation.
4. While CRPC Rule 5.5(b)(1) prohibits a person not admitted to practice in law in California from having a "systematic or continuous presence in California for the practice of law," ABA Model Rule 5.5(b)(1) prohibits a person not admitted to practice in the jurisdiction from having a "systematic and continuous presence."

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EXHIBIT F

**THE STATE BAR OF CALIFORNIA
STANDING COMMITTEE ON
PROFESSIONAL RESPONSIBILITY AND CONDUCT
FORMAL OPINION NO. 2023-208**

ISSUE: What are a California lawyer’s ethical duties when working remotely?

DIGEST: Remote practice does not alter a lawyer’s ethical duties under the California Rules of Professional Conduct and the State Bar Act. Managerial lawyers must implement reasonable measures, policies, and practices to ensure continued compliance with these rules in a remote working environment, with a particular focus on the duties of confidentiality, technology competence, communication, and supervision.

**AUTHORITIES
INTERPRETED:** Rules 1.1, 1.3, 1.4, 1.6, 5.1–5.3, and 5.5 of the Rules of Professional Conduct of the State Bar of California.¹

Business and Professions Code section 6068, subdivision (e).

Business and Professions Code sections 6125 et seq.

STATEMENT OF FACTS

A law firm (“Law Firm”) decides that it would like to provide its lawyers and staff with the flexibility to work remotely and plans to move to a smaller, shared office space. Law Firm plans to implement a hybrid work environment to provide its lawyers and staff with the flexibility to work remotely and in the physical office when necessary. It plans to rent shared workspace for its new physical office. Law Firm wants to know what ethical obligations arise for Law Firm and its lawyers as a result of this anticipated transition to its working environment.

INTRODUCTION

In response to advances in technology, the California wildfires, the COVID-19 pandemic, and other circumstances, more and more lawyers are working remotely. The same Rules of Professional Conduct that apply to attorneys practicing in traditional law firm offices apply to attorneys practicing remotely.² The application of the rules, however, raises unique issues for lawyers working remotely.³ This opinion will focus on the primary rules that may be implicated by a lawyer’s remote legal practice. While this opinion presents hypothetical facts to provide one common example, the ethical obligations discussed

¹ Unless otherwise indicated, all references to “rules” in this opinion will be to the Rules of Professional Conduct of the State Bar of California.

² See also Cal. State Bar Formal Opn. No. 2012-184 (discussing lawyers’ ethical obligations when practicing in a virtual law office).

³ Many of these same issues are likewise implicated by lawyers who practice in virtual law offices. See *id.*

herein would apply to lawyers who work remotely regardless of the underlying reasons or whether a traditional, physical office space remains available.

DISCUSSION

1. **Duty of Confidentiality, Rule 1.6; Business and Professions Code Section 6068, Subdivision (e)**

Because more lawyers and staff will be working remotely, Law Firm⁴ needs to ensure that the technology it uses to facilitate remote practice is consistent with applicable ethical obligations, including the duty of confidentiality. Many of this committee's ethics opinions emphasize that lawyers must take reasonable measures to safeguard confidential client information when using technology to transmit and store confidential client information.⁵ Law Firm may use third-party cloud providers to store or backup confidential client files or other technology solution vendors to facilitate remote practice. In doing so, Law Firm's managerial and supervisory lawyers must engage in reasonable efforts to ensure that these vendors' conduct is compatible with the lawyers' ethical obligations.⁶ Reasonable measures include investigating the provider's reputation, history, security, and backup measures; limiting access to confidential information; carefully reviewing the terms of service to ensure that they contain adequate provisions concerning data security and the handling of breaches of confidentiality; and periodically reviewing and monitoring providers' policies, practices, and procedures to ensure that they remain compatible with the lawyers' ethical obligations.⁷ If a lawyer is unable to evaluate the security of the technology used, the lawyer must seek additional information, or consult with someone who possesses the requisite knowledge to ensure compliance with the lawyer's duties of competence and confidentiality.⁸

⁴ Rule 1.0.1(c) defines a "law firm" as "a law partnership; a professional law corporation; a lawyer acting as a sole proprietorship; an association authorized to practice law; or lawyers employed in a legal services organization or in the legal department, division or office of a corporation, of a government organization, or of another organization." "Law Firm" is used in this opinion as shorthand in reference to the responsibilities of Law Firm's managerial lawyers. The rules regulate the conduct of lawyers, rather than law firms, through professional discipline. See rule 1.0(a).

⁵ See, e.g., Cal. State Bar Formal Opn. Nos. 2010-179 (addressing attorney's ethical duties of confidentiality and competence when using technology to transmit or store confidential client information); 2012-184 (addressing attorney's ethical obligation when practicing in a virtual law firms); 2015-193 (addressing attorney's ethical duties concerning e-discovery and referencing Comment [8] to ABA Model Rule 1.1); 2020-203 (addressing attorney's ethical obligations regarding data breaches); see also ABA Formal Ethics Opn. Nos. 477R (2017) and 483 (2018).

⁶ Rule 5.3(a)–(b).

⁷ For additional factors to consider in vetting and overseeing cloud providers, see Cal. State Bar Formal Opn. No. 2012-184 at pp. 3–4; Illinois State Bar Ass'n Professional Conduct Advisory Opn. No. 16-06; New York State Bar Ass'n Committee on Professional Ethics Opn. No. 842 (2010); and Pennsylvania Bar Ass'n Committee on Legal Ethics and Professional Responsibility Opn. No. 2011-200 at pp. 8–11. While beyond the scope of this ethics opinion, it would also be prudent for lawyers to consider applicable privacy laws, particularly if data are hosted outside of the United States. See ABA Model Rule 1.6, Cmt. [18]; Pennsylvania Bar Ass'n Committee on Legal Ethics and Professional Responsibility Opn. No. 2011-200 at p. 9.

⁸ *Id.*

When working from home, lawyers must implement reasonable measures to safeguard confidential client information, particularly if other household members share or have access to a home computer, laptop, or printer.⁹

Reasonable security measures might include creating separate accounts for household members, implementing two-factor authentication, strong passwords, and automatic logging off when the computer becomes inactive, and disabling the listening capability of smart speakers, virtual assistants, or other listening-enabled devices unless needed to assist with legal services.¹⁰ To the extent physical files are used, lawyers must ensure that they are stored and disposed of securely. This opinion does not intend to set forth specific mandatory measures as technology and associated risks are continually evolving and the reasonableness of security measures will depend upon multiple factors, including the client's instructions or needs, the sensitivity of the information, the remote working environment (e.g., kitchen/dining room office or backyard), and the presence of third parties, such as household members, neighbors, and repair workers. The failure to implement reasonable security measures may jeopardize the duty of confidentiality or the attorney-client privilege.¹¹

Because Law Firm will be moving to a smaller, shared office space, Law Firm will also need to implement reasonable measures to ensure that confidential client files (hard copy and electronic) are securely stored and not accessible by third parties sharing the office space. This committee and several bar associations have issued ethics opinions addressing lawyers' ethical obligations relating to shared office space, including protecting confidential client information, avoiding client confusion regarding the nature of the relationship among lawyers who share office space, and avoiding conflicts of interest.¹²

2. Duty of Competence, Rule 1.1

California recently amended rule 1.1 to incorporate a version of Comment [8] to ABA Model Rule 1.1, which is commonly referred to as a lawyer's "duty of technology competence."¹³ Our prior ethics opinions also explain a lawyer's duty of technology competence.¹⁴ The duty of technology competence applies to multiple aspects of a lawyer's practice, such as those involving electronic discovery, social media, law practice management, virtual law offices, and remote practice. The ABA Standing Committee on Ethics and Professional Responsibility declined to endorse strict rules relating to a lawyer's duty of technology competence but adopted a "reasonable efforts standard" and "fact-specific approach" based

⁹ This duty applies to other remote situations, such as lawyers working from airports, hotels or coffeeshops. See Cal. State Bar Formal Opn. No. 2010-179.

¹⁰ ABA Formal Ethics Opn. No. 498 (2021) at p. 6.

¹¹ See, e.g., Cal. State Bar Formal Opn. No. 2010-179 at p. 6; ABA Formal Ethics Opn. No. 498 (2021) at p. 5; ABA Formal Ethics Opn. No. 477R (2017) at p. 8.

¹² See, e.g., Cal. State Bar Formal Opn. No. 1997-150; Colorado Bar Ass'n Ethics Opn. No. 89 (revised and reissued on March 12, 2018); New York State Bar Ass'n Committee on Professional Ethics Opn. No. 939 (2012); see also rules 7.1 and 7.5.

¹³ Rule 1.1 (effective March 22, 2021), Cmt. [1] ("The duties set forth in this rule include the duty to keep abreast of the changes in the law and its practice, including the benefits and risks associated with relevant technology.").

¹⁴ See Cal. State Bar Formal Opn. Nos. 2010-179; 2012-184; and 2015-193.

on the ABA Cybersecurity Handbook.¹⁵ This committee agrees that this reasonableness standard applies to a lawyer's duty of technology competence.¹⁶

Law Firm must ensure that its technology solutions are sufficient to permit lawyers to reasonably access client files while working remotely. Requiring files to be saved to a centralized, secure case management system may help ensure reasonable access, for instance, if local files are lost or corrupted. Law Firm must also regularly back up files to ensure reasonable access in the event of data loss.¹⁷

Lawyers must also stay abreast of relevant court rules and procedures relating to COVID-19 and other disasters, including the closure or limited hours of courts, and be adequately prepared to render competent legal representation at remote court hearings and conferences.

In addition, a lawyer's duty of competence includes the "mental, emotional, and physical ability reasonably necessary for the performance" of legal services.¹⁸ The health, personal (e.g., school closures, childcare, or other family responsibilities), or financial impacts of pandemics and other disasters may interfere with a lawyer's physical, mental, or emotional ability to competently perform legal services. Similarly, the remote working environment itself may also affect a lawyer's mental or emotional health.¹⁹ The duty to render competent legal services is not excused under these circumstances.²⁰ Lawyers must take reasonable measures to ensure that they are able to provide competent legal services to their clients even in the event of a disaster. One way of doing so is to plan in advance to ensure that competent representation may still be rendered to clients in the event that a disaster adversely affects a lawyer's ability to render competent and diligent legal services.²¹

3. Duty of Communication, Rule 1.4

While working remotely, lawyers may increasingly communicate with prospective or current clients via a secure website portal, email, or other form of online communications, instead of through in-person meetings. In communicating with prospective clients, Law Firm should take reasonable steps to avoid forming unintended attorney-client relationships, such as by including disclaimers on its website or other online communications that posted information is not legal advice and that communication through the website does not create an attorney-client relationship. In addition, before entering into an engagement agreement, lawyers should obtain sufficient information from the client to screen for

¹⁵ ABA Formal Ethics Opn. No. 477R (2017) at p. 4.

¹⁶ See Cal. State Bar Formal Opn. Nos. 2020-203 at p. 5; 2010-179 at pp. 2–6.

¹⁷ ABA Formal Ethics Opn. No. 498 (2021) at p. 5.

¹⁸ Rule 1.1(b)(ii).

¹⁹ See, e.g., ABA Commission of Lawyers Assistance Program, January 2021 Update: https://www.americanbar.org/groups/lawyer_assistance/well-being-in-the-legal-profession/; California Lawyers Assistance Program: <https://www.calbar.ca.gov/Attorneys/Attorney-Regulation/Lawyer-Assistance-Program>; and Patrick Smith, *As Remote Work Brings Isolation, How Can Firms Keep Lawyers in the Fold?*: <https://www.law.com/americanlawyer/2020/03/31/as-remote-work-brings-isolation-how-can-firms-keep-lawyers-in-the-fold/>.

²⁰ *Smith v. State Bar* (1985) 38 Cal.3d 525, 540 [213 Cal.Rptr. 236] (decided under former rules).

²¹ Rules 1.1 and 1.3; ABA Formal Ethics Opn. No. 482 (2018) ("Lawyers also must take reasonable steps in the event of a disaster to ensure access to funds the lawyer is holding in trust.").

conflicts of interest and ensure that the party they are communicating with is the actual client or someone with authority to act on the client's behalf.²²

Lawyers also need to ensure that any alternative means of communications with clients are adequate to fulfill their duty of communication. Among other requirements, a lawyer must "reasonably consult with the client about the means by which to accomplish the client's objectives in the representation," and "keep the client reasonably informed about significant developments relating to the representation, including promptly complying with reasonable requests for information and copies of significant documents"²³ A lawyer must also "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."²⁴ When using electronic forms of communication, the lawyer must ensure that the client is receiving and understanding the information exchanged.²⁵ In certain circumstances, teleconferences or videoconferences may be needed. Even if litigation matters are delayed because of an emergency or another disaster, lawyers must continue to maintain communications with clients regarding the status of the case and any significant updates.²⁶

Exchanging alternative contact information with clients will help ensure lawyer's continued ability to communicate with clients during an emergency.²⁷ Confirming schedules and availability with clients, which may be altered during an emergency, may help ensure that clients have sufficient time to review draft responses to discovery, pleadings, and other important documents relating to the representation.

If an emergency or illness adversely affects the lawyer's ability to represent clients, the lawyer must communicate with clients about the effect on the lawyer's representation to permit a client to make an informed decision regarding the representation.²⁸

4. Duty of Supervision, Rules 5.1–5.3

California's rules relating to the duty of supervision reflect three separate sets of duties. First, rule 5.1 requires managerial and supervisory lawyers to make reasonable efforts to ensure compliance by other lawyers with the Rules of Professional Conduct and the State Bar Act. Second, a subordinate lawyer has an independent duty to comply with the rules and cannot simply follow the instruction of the lawyer's

²² See Cal. State Bar Formal Opn. No. 2012-184 at p. 5 (explaining that while lawyers in a traditional office environment have this same duty, the lack of in-person communication in connection with a virtual law office may make it more difficult for lawyers to make this determination, thus potentially requiring extra measures).

²³ Rule 1.4(a)(2)–(3).

²⁴ Rule 1.4(b).

²⁵ See Cal. State Bar Formal Opn. No. 2012-184 at p. 5.

²⁶ See also rule 1.3(b) ("Reasonable diligence" requires that "a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer.").

²⁷ See ABA Formal Ethics Opn. No. 482 (2018) at pp. 2–3 ("To be able to reach clients following a disaster, lawyers should maintain, or be able to create on short notice, electronic or paper lists of current clients and their contact information. This information should be stored in a manner that is easily accessible.").

²⁸ Rule 1.4(b); see also Oregon State Bar Coronavirus Response: Legal Ethics FAQ (2020) (providing detailed guidance on communications with clients relating to potential impacts of COVID-19 on representation, including manner of meetings, delay, assistance from another attorney, the continued ability to provide competent, diligent representation, and the potential need to withdraw).

supervisor.²⁹ Third, lawyers responsible for managing non-lawyer staff are responsible for implementing reasonable steps to ensure that the conduct of non-lawyer staff, including independent contractors, is consistent with the lawyer's duties under the Rules of Professional Conduct.³⁰ In addition, lawyers with managerial authority in a law firm "shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer."³¹

Under the facts presented, Law Firm must ensure that it provides appropriate tools and equipment, technology support, training, and monitoring to its lawyers and staff. Managerial lawyers could consult with appropriate information technology staff or consultants in implementing technology measures to assist with Law Firm's remote practice.

In addition, managerial lawyers at Law Firm must implement reasonable remote policies and practices, such as confidentiality and cybersecurity policies and training, to ensure the security of remote access and that the conduct of its lawyers and non-lawyers complies with the Rules of Professional Conduct. As an example, it is a good practice to carefully review the terms of any client guidelines for outside counsel, which may require specific confidentiality practices and cybersecurity insurance. To the extent Law Firm permits lawyers to use their own devices while working remotely, it is advisable for Law Firm to implement "Bring Your Own Device" (BYOD) policies that require lawyers and staff to maintain the confidentiality of firm and client data on personal devices.³² Managerial lawyers are responsible for enforcing Law Firm's remote policies and procedures and regularly updating them to keep pace with advances in technology. In addition, all lawyers, including associates, who are working remotely must implement reasonable measures to comply with their professional duties while working remotely regardless of whether Law Firm has implemented any formal policies and procedures.³³

Managerial lawyers and lawyers overseeing nonlawyers or other lawyers must maintain regular communications to oversee their work. Because Law Firm is maintaining a physical office, in-person trainings or meetings may assist in confirming that everyone is receiving and understanding the directions and guidance being provided. For law firms that decide to transition to "virtual only" environments, it is a good practice to use videoconferencing for important trainings or meetings.

Finally, as described above in connection with the duty of confidentiality, lawyers must adequately vet outside vendors and contractors and oversee their work to ensure it is consistent with the lawyer's

²⁹ Rule 5.2.

³⁰ Rule 5.3(b), Cmt.

³¹ Rule 5.3(a).

³² For additional suggested BYOD practices, see ABA Formal Ethics Opn. No. 498 (2021) at p. 7. The Association of Corporate Counsel has also published resources for BYOD policies. See, e.g., Daniel B. Garrie, Senior Managing Partner, Law & Forensics LLC, *Top Ten Tips for Managing the "Bring Your Own Device to the Workplace" Environment*, available at: <https://www.acc.com/resource-library/top-ten-tips-managing-bring-your-own-device-workplace-environment>.

³³ See rule 5.1(a) ("A lawyer shall comply with these rules and the State Bar Act notwithstanding that the lawyer acts at the direction of another lawyer or other person.").

ethical obligations. Written nondisclosure or confidentiality agreements may be appropriate for certain vendors as well as procedures to maintain reasonable access and control of client data.³⁴

5. Unauthorized Practice of Law, Rule 5.5 and Business and Professions Code Sections 6125–6133

The committee recognizes that lawyers working remotely may temporarily or permanently relocate to another state where the lawyer is not licensed to practice law. This committee is not authorized to opine on issues of unauthorized practice of law, including whether a particular conduct or activity constitutes the unauthorized practice of law. California licensed lawyers practicing California law remotely in another state where they are not licensed should consult the multijurisdictional practice and unauthorized practice of law rules and authorities of the state where they are physically present.³⁵ The ABA and some other state bar and local ethics committees have issued opinions regarding unauthorized practice of law considerations for attorneys remotely practicing the law of the jurisdictions in which they are licensed while physically present in a jurisdiction in which they are not admitted.³⁶

³⁴ See, e.g., ABA Formal Ethics Opn. No. 498 (2021) at p. 7; Cal. State Bar Formal Opn. No. 2010-179 at pp. 4–5; New York State Bar Ass’n Committee on Professional Ethics Opn. No. 842 (2010); Oregon State Bar Ethics Opn. No. 2011-188 (revised 2015).

³⁵ See rule 5.5(a)(1).

³⁶ See, e.g., ABA Formal Ethics Opn. No. 495 (2020) at pp. 3–4 (“[I]n 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.”); D.C. Court of Appeals Opn. No. 24-20 (2020) at p. 3 (concluding that the “incidental and temporary practice” exception under D.C. Court of Appeals Rule 49(c)(13) permitted an attorney who is not licensed in D.C. to practice law from their residence located in D.C., as long as the attorney “(1) is practicing from home due to the COVID-19 pandemic; (2) maintains a law office in a jurisdiction where the attorney is admitted to practice; (3) avoids using a D.C. address in any business document or otherwise holding out as authorized to practice law in D.C., and (4) does not regularly conduct in-person meetings with clients or third parties in D.C.”); Delaware State Bar Ass’n Committee on Professional Ethics Opn. No. 2021-1 (concluding that “lawyers licensed in Delaware . . . may ethically engage in the practice of Delaware law, for clients with Delaware matters, while physically present in another jurisdiction in which they are not admitted” unless prohibited by the law of the other jurisdiction; lawyers may not hold themselves out as being licensed to practice in the other jurisdiction and may not advertise or otherwise hold themselves out as having an office in the other jurisdiction); *Florida Bar re Advisory Opinion—Out-of-State Attorney Working Remotely from Florida Home*, No. SC20-1220 (Fla. 2021) 318 So.3d 538 (finding that a New Jersey lawyer physically working from his home in Florida exclusively on federal intellectual property matters for his New Jersey law firm is not committing UPL in Florida as long as he does not hold himself or his firm out to the public as having a Florida presence, does not give advice about Florida law, and provides no legal services to Florida residents); New Jersey Committee on the Unauthorized Practice of Law Opn. No. 59 and Advisory Committee on Professional Ethics Opn. No. 742 (2021) (non-New Jersey-licensed lawyers may practice out-of-state law from New Jersey, provided they do not maintain a “continuous and systematic presence” in New Jersey or hold themselves out as being available for the practice of law in New Jersey); Utah Ethics Advisory Committee Opn. No. 19-03 (2019) at p. 1 (“The Utah Rules of Professional Conduct do not prohibit an out-of-state attorney from representing clients from the state where the attorney is licensed even if the out-of-state attorney does so from his private location in Utah. However, in order to avoid engaging in the unauthorized practice of law, the out-of-state attorney who lives in Utah must not establish a public office in Utah or solicit Utah business.”); Bar Ass’n of San Francisco Ethics Opn. No. 2021-1 (“A lawyer who is not licensed in California, and who does not

Lawyers not licensed in California who are working remotely in California should consult rule 5.5(b), California Rules of Court 9.40–9.48, Business and Professions Code sections 6125 et seq. and relevant authorities regarding multijurisdictional practice and the unauthorized practice of law.³⁷

CONCLUSION

Lawyers may ethically practice remotely under the Rules of Professional Conduct and the State Bar Act, provided they continue to comply with these rules, including the duties of confidentiality, competence, communication, and supervision. Lawyers must implement reasonable measures to ensure compliance that are tailored to the relevant circumstances and remote working environment.

This opinion is issued by the Standing Committee on Professional Responsibility and Conduct of the State Bar of California. It is advisory only. It is not binding upon the courts, the State Bar of California, its Board of Trustees, any persons, or tribunals charged with regulatory responsibilities, or any licensee of the State Bar.

[Publisher's Note: Internet resources cited in this opinion were last accessed by staff on April 13, 2023. Copy of these resources are on file with the State Bar's Office of Professional Competence.]

advertise or otherwise hold himself or herself out as a licensed California lawyer, does not establish an office or other systematic or continuous presence for the practice of law in California, and does not represent a California person or entity, but is merely physically present in California while using modern technology to remotely practice law in compliance with the rules of the jurisdiction where the lawyer is licensed, should not be held in violation of California's Unauthorized Practice of Law ("UPL") rule and laws, specifically California Rules of Professional Conduct ("CRPC") Rule 5.5, or the State Bar Act, Business & Professions ("B&P") Code §§6125-6126.").

³⁷ See *Birbrower, Montalbano, Condon & Frank, P.C. v. Sup. Ct.* (1998) 17 Cal.4th 119, 128–129 [70 Cal.Rptr.2d 304] (stating that "one may practice law in [California] in violation of section 6125 although not physically present here by advising a California client on California law in connection with a California legal dispute by telephone, fax, computer, or other modern technological means"); *In re Estate of Condon* (1998) 65 Cal.App.4th 1138, 1145–1146 [76 Cal.Rptr.2d 922] ("In the real world of 1998 we do not live or do business in isolation within strict geopolitical boundaries. Social interaction and the conduct of business transcends state and national boundaries; it is truly global. A tension is thus created between the right of a party to have counsel of his or her choice and the right of each geopolitical entity to control the activities of those who practice law within its borders.").

EXHIBIT G

Table 1

Jurisdiction	Source	Provision
New Jersey	Ethics opinion	N.J. Comm. on the Unauthorized Prac. of L. & N.J. Advisory Comm. on Prof'l Ethics, Joint Op. 59 & 742, at 3 (2021) (“[N]on-New Jersey licensed lawyers who are associated with an out-of-state law firm . . . and who simply work remotely from their New Jersey homes but do not exhibit such outward physical manifestations of presence, are not considered to have a “continuous and systematic presence” for the practice of law in New Jersey. Such non-New Jersey licensed lawyers are not considered to be engaging in the unauthorized practice of New Jersey law.”).
Michigan	Ethics opinion	Mich. State Bar, Ethics Op. RI-382 (2021) (“An out-of-state attorney physically located in Michigan, but practicing the law exclusively of a jurisdiction in which the out-of-state attorney is licensed, does not violate Rule 5.5.”).
Wisconsin	Ethics opinion	Wis. State Bar, Formal Ethics Op. EF-21-02, at 10 (2021) (“[T]he Rule does not prohibit an out-of-state lawyer from representing clients from the state where the attorney is licensed even if the out-of-state lawyer does so from the lawyer’s private location in Wisconsin. However, in order to avoid engaging in the unauthorized practice of law, the out-of-state lawyer must not establish a public office in Wisconsin or solicit Wisconsin business unless otherwise authorized by law.”).
Virginia	Ethics opinion	Va. Legal Ethics Op. 1896 (2022) (“[A] lawyer who is not licensed in Virginia may work from a location in Virginia on a continuous and systematic basis, as long as that practice is limited to exclusively federal law and/or the law of the lawyer’s licensing jurisdiction, regardless of the reason for being in Virginia.”).
Florida	Ethics opinion	<i>See</i> Fla. Bar Comm. on Unauthorized Prac. L., Advisory Op. 2019-4 (2021) (“It is the opinion of the Standing Committee that the Petitioner who simply establishes a residence in Florida and continues to provide legal work to out-of-state clients from his private Florida residence under the circumstances described in this request does

		not establish a regular presence in Florida for the practice of law. Consequently, it is the opinion of the Standing Committee that it would not be the unlicensed practice of law for Petitioner, a Florida domiciliary employed by a New Jersey law firm (having no place of business or office in Florida), to work remotely from his Florida home solely on matters that concern federal intellectual property rights (and not Florida law) and without having or creating a public presence or profile in Florida as an attorney.”).
New York	Court rule	N.Y. Ct. App. R. § 523.5 (“A lawyer who is not admitted to practice in this State but who is authorized to practice law in one or more other jurisdictions . . . may practice law from a . . . permanent residence or . . . permanent location in this State to the same extent that such lawyer is permitted to practice law in the jurisdiction(s) where the lawyer is duly admitted or authorized,” subject to several enumerated conditions).
New Hampshire	Ethics rule	N.H. Rules of Prof. Conduct, R. 5.5(d)(3) (“A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that . . . relate solely to the law of a jurisdiction in which the lawyer is admitted); <i>id.</i> cmt. 3 (“Prior versions of Rule 5.5 and prior interpretations of the Rule assumed that attorneys practice in fixed physical offices and only deal with legal issues related to the States in which their offices are located. The increased mobility of attorneys, and, in particular, the ability of attorneys to continue to communicate with and represent their clients from anywhere in the world, are circumstances that were never contemplated by the Rule. The adoption of Rules 5.5(b) and (c) in 2008 reflected the State’s growing recognition that multi-jurisdictional practice is a modern reality that must be accommodated by the Rules. The assumption that a lawyer must be licensed in New Hampshire simply because he or she happens to be present in New Hampshire no longer makes sense in all instances. Rather than focusing on where a lawyer is physically located, New Hampshire’s modifications of Rule 5.5(b)(1)

		and (2) and adoption of new Rule 5.5(d)(3) clarify that a lawyer who is licensed in another jurisdiction but does not practice New Hampshire law need not obtain a New Hampshire license to practice law solely because the lawyer is present in New Hampshire.”).
Ohio	Ethics rule	<i>See</i> Ohio Rules of Prof. Conduct, R. 5.5(d)(4) (“A lawyer admitted and in good standing in another United States jurisdiction may provide legal services in this jurisdiction through an office or other systematic and continuous presence” if “the lawyer is providing services that are authorized by the lawyer's licensing jurisdiction, provided the lawyer does not do any of the following: (i) solicit or accept clients for representation within this jurisdiction or appear before Ohio tribunals, except as otherwise authorized by rule or law; (ii) state, imply, or hold himself or herself out as an Ohio lawyer or as being admitted to practice law in Ohio; (iii) violate the provisions of Rules 5.4, 7.1, and 7.5.”); <i>see also id.</i> at cmt. 22 (The rule “allows an attorney admitted in another United States jurisdiction to practice the law of that jurisdiction while working remotely from Ohio. A lawyer practicing remotely will not be found to have engaged in the unauthorized practice of law in Ohio based solely on the lawyer's physical presence in Ohio, though the lawyer could through other conduct violate the rules governing the unauthorized practice of law. A lawyer practicing remotely in Ohio must continue to comply with the rules of the lawyer's home jurisdiction regarding client trust accounts, and any client property consisting of funds should be handled as if the lawyer were located in the lawyer’s home jurisdiction.”).
Hawaii	Ethics rule; comment	Haw. Rules of Prof. Conduct, R. 5.5 cmt. 3 (“Lawyers not authorized to practice law in Hawai‘i might lawfully remotely practice the law of the jurisdictions in which they are permitted to practice, to the extent permitted by that jurisdiction, while they are physically present in Hawai‘i, provided they do not (a) hold themselves out as being licensed to practice in Hawai‘i, (b) advertise or otherwise hold themselves out as having an office in Hawai‘i, (c) provide or offer to provide Hawai‘i legal services, or (d) engage in any other activity connected to

		the practice of law in Hawai'i other than their mere physical presence in Hawai'i.”).
South Carolina	Ethics rule; comment	S.C. Rules of Prof. Conduct, R. 5.5 cmt. 4 (“A lawyer admitted in another jurisdiction does not establish an office or other systematic presence in this jurisdiction for the practice of law by engaging in remote work in this jurisdiction, provided the lawyer's legal services are limited to services the lawyer is authorized to perform by a jurisdiction in which the lawyer is admitted, and the lawyer does not state, imply, or hold out to the public that the lawyer is a South Carolina lawyer or is admitted to practice law in South Carolina.”).

Table 2

Jurisdiction	Source	Provision
Minnesota	Ethics rule	<i>See</i> Minn. Rules of Prof. Conduct, R. 5.5(d) (“A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in Minnesota that exclusively involve . . . the law of another jurisdiction in which the lawyer is licensed to practice law, provided the lawyer advises the lawyer’s client’s [sic] that the lawyer is not licensed to practice in Minnesota.”).
North Carolina	Ethics rule	<i>See</i> N.C. Rules of Prof. Conduct, R. 5.5(d)(2) (“A lawyer admitted to practice in another United States jurisdiction or in a foreign jurisdiction . . . does not engage in the unauthorized practice of law in this jurisdiction and may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law if the lawyer’s conduct is in accordance with these Rules and . . . the lawyer is providing services limited to . . . the law of the jurisdiction in which the lawyer is admitted to practice . . .”).
Rhode Island	Ethics rule; comment	<i>See</i> R.I. Rules of Prof. Conduct, R. 5.5(d)(2); <i>see also id.</i> at (b)(1) cmt. 4 (“An office is not ‘established’ in Rhode Island within the meaning of the rule if the lawyer works remotely from a temporary or permanent home in the state and the lawyer maintains a law office in a jurisdiction where the lawyer is admitted and authorized to practice, the lawyer does not use local contact information on letterhead, business cards[, websites, or advertisements, the lawyer does not conduct in-person meetings with clients or third persons in the state except as would otherwise be permitted in this rule and there are no other indicia of a physical presence in the state for the practice of law.”).
Maryland	Ethics rule	Md. Att’y Rules of Prof. Conduct 19-305.5(d)(3) (“An attorney admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction and may establish an office or other systematic or continuous presence in this jurisdiction to provide those services if the legal services . . . exclusively involve the law

		of another jurisdiction in which the attorney is licensed to practice law, provided the attorney advises the attorney's client in writing that the attorney is not licensed to practice Maryland law.”).
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Table 3

Jurisdiction	Source	Provision
ABA	Model Rule; Ethics opinion	Model Rules of Prof. Conduct, R. 5.5(d) (Am. Bar. Ass’n 2019) (“A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign 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, are not services for which the forum requires pro hac vice admission; and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or (2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.”); ABA Comm. on Ethics & Pro. Resp., Formal Op. 495 (2020).
Illinois	Ethics rule	Ill. Rules of Prof. Conduct, R. 5.5(d) (“A lawyer admitted in another United States jurisdiction or admitted or otherwise authorized to practice in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, 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 by federal or other law or rule to provide in this jurisdiction.”).
South Dakota	Ethics rule	S.D. App’x to Ch. 16-18, Rules of Prof. Conduct, R. 5.5(d) (“A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign 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, are not services for which the forum requires pro hac vice admission, and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or (2) Are services that the lawyer is authorized to provide by federal law or other law or rule to provide in this jurisdiction, provided that the lawyer obtains a South Dakota sales tax license and tenders the applicable taxes pursuant to chapter 10-45.”).
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Table 4

Jurisdiction	Source	Provision
Delaware	Ethics opinion	Del. State Bar Ass’n Comm. on Prof’l Ethics, Formal Op. 2021-1 (2021) (“The Committee concludes that lawyers licensed in Delaware (the ‘licensing jurisdiction’) may ethically engage in the practice of Delaware law, for clients with Delaware matters, while physically present in another jurisdiction in which they are not admitted (“local jurisdiction”) unless a statute, rule, case law, or opinion of the local jurisdiction prohibits the conduct, provided that such 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 for matters subject to the local jurisdiction, unless otherwise authorized.”).
Illinois	Ethics opinion	Ill. State Bar Ass’n, Prof’l Conduct Advisory Op. 22-03 (2022) (“It does not violate the Illinois Rules of Professional Conduct for an Illinois licensed lawyer to practice Illinois law from a geographic location outside of Illinois where the Illinois lawyer is not licensed.”).
Pennsylvania	Ethics opinion	Pa. Bar Ass’n, Comm. on L. Ethics & Prof’l Resp., & Phila. Bar Ass’n, Prof’l Guidance Comm., Joint Formal Op. 2021-100 (2021) (“[T]he 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.”).

EXHIBIT H

Informal Opinion Number: 970098

Rules: 5.5

Law Firms and Associations

Unauthorized Practice of Law

QUESTION: Attorney is licensed in a neighboring state, but not in Missouri, and is considering setting up a law office in Missouri. Attorney practices Immigration & Naturalization Law and labor certifications. The INS office and the Department of Labor Regional office are located in Missouri. The Immigration Service requires only that an attorney appearing before them have a current license in some state. Attorney plans to continue to practice solely in the field of immigration if an office is established in Missouri. May Attorney establish an immigration practice office in Missouri without obtaining a Missouri law license? ANSWER: It would constitute the unauthorized practice of law for Attorney to provide legal advice or counseling on any area of law from an office which is located physically within the state of Missouri.

Informal Opinions are ethics advisory opinions issued by the Office of Legal Ethics Counsel to members of the Bar about Rule 4 (Rules of Professional Conduct), Rule 5 (Complaints and Proceedings Thereon), and Rule 6 (Fees to Practice Law) pursuant to Missouri Supreme Court Rule 5.30(c). Written summaries of select Informal Opinions are published for informational purposes as determined by the Advisory Committee of the Supreme Court of Missouri pursuant to Rule 5.30(c). Informal opinion summaries are advisory in nature and are not binding. These opinions are published as an educational service and do not constitute legal advice.

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