

Ethical Remote Practice of Law in a Post-Pandemic World

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We will all recall in 2020 when the world shut down and the entire legal field moved to a remote practice. Vestiges of that time remain, where many attorneys took jobs far from their homes with the intention of working remotely full-time, or continue to work in a hybrid fashion—sometimes in the office and sometimes remotely, or simply appreciate the benefit of traveling somewhere else on occasion while remaining available to clients and colleagues. In Pennsylvania, the comments to the Rules of Professional Conduct have caught up with the times, and we now have clear guidance on how attorneys are permitted to practice within and outside of the commonwealth. Pennsylvania Rule of Professional Conduct 5.5 addresses the unauthorized practice of law. Rule 5.5(a) provides that lawyers “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.” Rule 5.5(b)(1) prohibits lawyers who are not admitted to practice law in the commonwealth from “establishing an office or other systematic and continuous presence in this jurisdiction for the practice of law.”

How and where Pennsylvania lawyers are permitted to practice law under this Rule was a growing question as the ability to work remotely expanded over the last decade, and the question became more pressing during the COVID pandemic. In

2021, the Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility and the Philadelphia Bar Association Professional Guidance Committee co-authored Joint Formal Opinion 2021-100, which offered the conclusion that “lawyers licensed in Pennsylvania may ethically engage in the remote practice of law for clients with Pennsylvania matters while being physically present in a jurisdiction in which they are not admitted unless a statute, rule, case law, or opinion of that jurisdiction prohibits the conduct.”

Last month, this conclusion was substantively adopted when comment [4] to Rule 5.5 of the Pennsylvania Rules of Professional Conduct was amended to include the following language:

With the rise of advanced communications technology, and in the advent of the 2020 global pandemic, the legal profession confronted the issue of remote legal practice and the unauthorized practice of law, in the context of Rule 5.5(b)(1). The following guidance is provided: A lawyer who is not admitted to practice in Pennsylvania may remotely practice the law of the jurisdictions in which the lawyer is licensed while physically present in Pennsylvania, provided the lawyer does not hold himself or herself out as being admitted to practice in Pennsylvania and does not provide, offer to provide, or hold

himself or herself out as authorized to provide legal services in Pennsylvania.

Remote practice that satisfies these requirements does not constitute systematic and continuous presence in this jurisdiction for the purposes of Rule 5.5(b)(1). A lawyer authorized to practice law in Pennsylvania may remotely practice the law of Pennsylvania while the lawyer is physically present outside of Pennsylvania, provided the lawyer is not prohibited from doing so in the jurisdiction where the lawyer is physically present. See Pa. R.C.P. 5.5, comment [4] (emphasis added).

Thus, it is now clear in Pennsylvania that if you are licensed to practice law in the commonwealth, you may work anywhere, provided you do not violate the rules in that location. The burden is on the Pennsylvania lawyer to familiarize himself with the local rules of professional conduct, statutes and case law regarding the practice of law by attorneys in that jurisdiction who are licensed elsewhere. Pennsylvania lawyers should be cautioned that a violation of the law or rules of professional conduct of the location where the lawyer is practicing is also a violation of Pennsylvania Rule of Professional Conduct.

The remainder of the new comment addresses the practice of law in Pennsylvania by attorneys who are licensed elsewhere. Just as Pennsylvania permits its own attorneys to practice Pennsylvania law elsewhere, it is also permissible for out of state attorneys to practice the law of their own jurisdictions here provided they do not violate the provisions of our rules of professional conduct. The change to the

comment makes clear that the remote practice of law here does not constitute systematic and continuous presence in this jurisdiction in violation of Rule 5.5(b)(1).



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