



# ISBA Professional Conduct Advisory Opinion

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**Opinion No. 12-09**  
**March 2012**

**Subject:** Unauthorized Practice of Law; Multijurisdictional Practice; Law Firms

**Digest:** A lawyer not admitted in Illinois may not primarily practice in this state, physically or through a virtual office, even if the co-owner of the law firm is a lawyer, licensed in Illinois, who has direct supervision of the non-admitted lawyer on matters involving Illinois clients.

**References:** Illinois Rules of Professional Conduct 5.5, 7.1, 8.5(a)

ABA Report of the Commission on Multijurisdictional Practice (2002)

Illinois Supreme Court Rule 721(a)(4)

Ohio Sup. Ct., Bd. of Comm'rs on Grievances & Discipline, Opinion 2011-2

## **FACTS**

Two attorneys wish to establish a law practice owned 50/50 between them. One is licensed only in Illinois, one is licensed only in State X.

Both live and primarily work in Illinois. However, the attorney licensed in State X makes frequent visits to State X for networking and to cultivate a client base there. The attorneys agree that the Illinois-licensed attorney will have direct supervision and ultimate authority over matters involving Illinois clients, although the State X-licensed attorney will interact with Illinois clients and dispense legal advice to them from time to time.

The Illinois-licensed attorney will sign all pleadings in Illinois courts, make all Illinois court appearances, and conduct any Illinois real estate closings personally. The State X-licensed attorney will engage in networking and market himself in Illinois as an

attorney, but will take precautions to ensure that potential clients do not get the impression that he is licensed in Illinois. All letterheads and business cards will clearly and correctly indicate the jurisdictions in which each attorney is licensed to practice. Both attorneys agree to make sure, at the time any client is acquired, that the client understands that the State X-licensed attorney is not licensed in Illinois. Retainer agreements will contain bold-type disclosures to this effect.

### **QUESTIONS**

Is the State-X licensed attorney in the above scenario engaged in the unauthorized practice of law for purposes of Rule of Professional Conduct 5.5 or any other restrictions?

Also, if the practice were to have a virtual office and the lawyers' states of bar admission were made clear in correspondence, would there be ethical concerns?

### **OPINIONS**

RPC 5.5 addresses the topics of unauthorized practice of law and multijurisdictional practice, and provides definitive guidance in answering the first question posed. Paragraph (b) of the rule is the provision applicable to that inquiry:

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

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

Under the facts provided, the State X lawyer would work primarily in Illinois, which means that he would have a systematic and continuous presence (presumably including an office) in Illinois for the practice of law, in violation of paragraph (b)(1). The fact that the state of admission is accurately displayed does not vitiate that violation, as Rule 5.5(b)(1) prohibits the systematic and continuous presence, independent of the lawyer's representation as to his bar admission. Rule 5.5(b)(2) serves as a specific example of the general prohibition, in RPC 7.1, against making "a false or misleading communication." Lawyers engaged in allowable multijurisdictional practice should not state or imply that they are generally admitted in locations outside of their actual jurisdictions of admission.

Paragraph (b)(1) does allow for exceptions, and several safe harbors are established by paragraph (c) (temporary practice in discrete matters) and paragraph (d) (house counsel and federal practice). None of those exceptions apply to the proposed law practice, nor is there any other law in Illinois that would permit it. Despite the fact that

the Illinois lawyer will personally attend court and real estate closings and will supervise the State X lawyer, the latter will still be practicing law in Illinois systematically and continuously.

The promulgation of Rule 5.5 was intended to reflect the realities of multijurisdictional practice by clarifying the circumstances under which it would be allowed, but it was not intended to modify the familiar understanding among American lawyers "...that they may not open a permanent office in a state where they are not licensed..." American Bar Association, Report of the Commission on Multijurisdictional Practice, Introduction and Overview, p. 13 (August 2002). While multijurisdictional law practices are allowable and not uncommon, it is expected that lawyers in such arrangements will practice primarily in their respective states of admission. See Ill. Sup. Ct. R. 721(a)(4)(non-admitted shareholders of professional service corporations, etc., not permitted to practice law in Illinois).

The Committee concludes that the State X lawyer would be acting in violation of Rule 5.5(b) should he work primarily in Illinois. Such a lawyer would be subject to discipline not only in State X, but also in Illinois, inasmuch as RPC 8.5(a) (as amended effective January 1, 2010, to account for multijurisdictional practice) provides, in part, as follows: "A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction." And the Illinois lawyer would be subject to discipline for participating in the arrangement, as Rule 5.5(a) forbids assisting another in unauthorized practice.

The second question seeks the Committee's view on the same set of facts, except that the firm would have a virtual office from which the firm's correspondence would identify the lawyers' respective states of admission. The advent of the virtual law office, or online legal practice, has raised several ethical challenges, including concerns about the unauthorized practice of law. Such issues can and should be analyzed under the framework of the Rules of Professional Conduct. See, e.g., Ohio Sup. Ct., Bd. of Comm'rs on Grievances & Discipline, Op. 2011-2 (October 7, 2011).

In the context of a virtual law office involving lawyers from different states, each lawyer should take care that any out-of-state practice is not systematic and continuous. The proposed practice involves a lawyer from State X who wishes to practice regularly in Illinois, whether through a physical presence or a virtual presence. "Presence may be systematic and continuous even if the lawyer is not physically present here." RPC 5.5, Comment [4]. So even if the virtual office were not based in Illinois, the fact that the State X lawyer would do work for Illinois clients and would seek legal work in Illinois establishes a systematic and continuous presence. As noted in the Ohio ethics opinion cited above, concerning a law firm located outside of Ohio and advertising on the internet, "'Systematic and continuous' presence includes both physical and virtual presence in Ohio." Ohio Op. 2011-2, p. 8.

Because the State X lawyer wishes to practice regularly in Illinois, the Committee is of the opinion that Rule 5.5(b) bars the proposed practice, regardless of whether the lawyer's presence in Illinois is physical or virtual. Additionally, because the Illinois lawyer would be part and parcel of the project, he or she would be subject to discipline under Rule 5.5(a) for assisting the State X lawyer.

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