



ISBA Professional Conduct Advisory Opinion

Opinion 22 – 03

October 2022

- Subject:** Law Firms; Multijurisdictional Practice; Unauthorized Practice of Law.
- Digest:** 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.
- References:** Illinois Rules of Professional Conduct, Rule 5.5
Illinois Rules of Professional Conduct, Rule 5.5, Comment [2]
ISBA Advisory Opinion on Professional Conduct No. 02-04 (2002)
American Bar Association Formal Opinion 498 (2021) & 495 (2020)
Delaware State Bar Association Formal Opinion 2021-1 (2021)
Florida Bar Advisory Opinion SC20-1220 (2021)
Florida Supreme Court, *In Re: Amendments to Rule Regulating the Florida Bar 3-5.5*, Case No. SC21-1379
Wisconsin Formal Ethics Opinion EF-21-02
Henry S. Drinker, Legal Ethics (Columbia University Press, 1953) pp. 66-7.

FACTS and QUESTIONS

Numerous fact situations were propounded regarding an Illinois lawyer on vacation or otherwise located outside of Illinois but continuing to provide representation to clients. The fact situations are best summarized by the following questions: May an Illinois licensed lawyer practice law representing clients in a location outside the geographic boundaries of the state of Illinois, including virtual appearance in Illinois courts from the out of Illinois' geographic boundaries?

OPINION

Fundamentally, the question a lawyer's geographic location to practice law of the jurisdiction in which the lawyer is licensed is neither contemplated nor directly addressed in the Illinois Rules of Professional Conduct. Rather, the focus of the Rules is on the jurisdiction in

which the lawyer is admitted to practice and the unauthorized practice of law as delineated in Illinois Rule 5.5.

Illinois Rules of Professional Conduct Rule 5.5 states:

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(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.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(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.

(e) For purposes of paragraph (d), the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction.¹

Rule 5.5 makes no distinction between “jurisdiction” and “geographically”. Analytically and practically, there is no evident consideration of a difference.

Rules and laws prohibiting the “unauthorized practice of law” are intended to protect the residents of a state from both lawyers not licensed to practice in the state and non-lawyers selling legal services. Comment [2] to Rule 5.5 states: [L]imiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons.” See, Attorneys Act, 705 ILCS 205/1.

1. Bifurcating Unauthorized Practice of Law and Rule 5.5 between Jurisdiction and Geography.

Historically, there was no distinction between where a lawyer was physically practicing law and the jurisdiction in which a lawyer was admitted to practice law. American Bar Association Canon 47 adopted in 1937 provided “[n]o lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, person or corporate (*sic*).”² Indeed, the majority of the early opinions and court decisions related to businesses selling legal services or using a lawyer to sell legal services.

There are no direct historic examples discovered discussing the difference between where a lawyer is geographically located versus jurisdictionally admitted to practice. The closest indication is a citation to a New York City Bar opinion saying a lawyer “may supply office space to English solicitors to enable them to meet clients and give advice on English law.”³

Further, ISBA Advisory Opinion on Professional Conduct No. 02-04 seemed to recognize the legitimacy of bifurcating geography and jurisdiction in analyzing a lawyer’s practice. The facts of the inquiry stated:

A lawyer licensed in Illinois and State X moves out of Illinois and begins practice in State X, while maintaining his Illinois law license and registration. An Illinois couple, known to the attorney, has an automobile accident in State Y, where the attorney is not licensed to practice; however the couple is treated medically in Illinois where the attorney maintains current license registration to practice law.

The Committee concluded there was no unauthorized practice of law:

¹ <https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/f12d5e5c-0665-40fa-a145-6a2c28fd35d4/RULE%205.5.pdf>

² Henry S. Drinker, *Legal Ethics* (Columbia University Press, 1953) p. 66.

³ Id. p. 67 citing “N.Y. City B-61; see also N.Y. City 622.”

An attorney licensed in State X who negotiates, from his office in State X, his clients' claim for medical matters in State Y, where no lawsuit has been filed and where the attorney is not licensed, does not engage in the unauthorized practice of law, and need not associate with an attorney in State Y to conduct this negotiation.

However, as a practical matter, the fact that lawyers—even in pre-Internet days—would travel across state geographic lines and work on client files, make telephone calls to clients, and even attend out of state depositions is a reality that only the pandemic expansion of remote practice would require an ethics opinion.

2. Virtual or Remote Practice from Geographic Jurisdictions in which Lawyer is not Licensed.

The ABA and several other states have opined upon the question of lawyers practicing law of their jurisdictional states of admissions (home states) from geographic locations other than their home states.

ABA Formal Opinion 495 (December 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 committee 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.⁴

The ISBA Standing Committee on Professional Conduct concurs with this conclusion as being an applicable interpretation of the Illinois Rules. We would add that this would not violate the Illinois Rules of Professional Conduct to make any “virtual” appearance in an Illinois proceeding or matter by telephonic, electronic, or visual/computer means from a geographic location outside of Illinois with appropriate notice and approval of the court and parties.

The Florida supreme Court approved an opinion from its Standing Committee on the Unlicensed Practice of Law in May 2021. The opinion concludes that a New Jersey licensed lawyer may properly conduct his federal intellectual property law practice for his New Jersey firm's clients from his Florida home where all activities are run through the New Jersey firms address, emails, telephone numbers, etc., and there is no holding out or identification with

⁴ https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba-formal-opinion-495.pdf

Florida.⁵ In February 2022, the Florida Court incorporated that opinion by amending Florida Rule 4-5.5 to say:

“[A] lawyer licensed in another United States jurisdiction does not have a regular presence in Florida for the practice of law when the lawyer works remotely while physically located in Florida for an extended period of time if the lawyer works exclusively on non-Florida matters, and neither the lawyer nor any firm employing the lawyer hold out to the public as having a Florida presence.”⁶

The Delaware State Bar Association concluded 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 (“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.⁷

However, other geographic jurisdictions may take a different view and consider the presence and practice of any law—Illinois, federal, tribal, etc.—in that state’s geographic location without appropriate jurisdictional admission as a violation of law or disciplinary rules. It would behoove the Illinois lawyer to check the law and professional conduct rules of the geographic location in which the lawyer intends to practice Illinois law.

3. The Big Picture

Two opinions—one from Wisconsin and one from the ABA—address the broader question of geographic location and jurisdictional admission.

Wisconsin Formal Ethics Opinion EF-21-02 illuminates the issues involved in a lawyer practicing remotely in a geographic jurisdiction where the lawyer is not licensed:

The basic responsibilities that a lawyer owes the client – competence, diligence, communication, and confidentiality - lie at the core of lawyer’s professional obligations and remain unchanged irrespective of the lawyer’s physical location. What has changed is discharging these responsibilities effectively in a world increasingly dominated by technology and, more recently, in an environment where lawyers are isolated from their

⁵ <https://www-media.floridabar.org/uploads/2021/06/Order-on-FAO-2019-4-O-O-S-Atty.-Working-Remotely-From-Florida-Home.pdf>

⁶ *In Re: Amendments To Rule Regulating The Florida Bar 4-5.5*, Case No. SC21-1379.

⁷ Delaware State Bar Association Committee on Professional Ethics, Formal Opinions 2021-1, July 9, 2021, <https://media1.dsba.org/public/Committees/Ethics/DSBA%20PEC%20Opinion%202021-1.pdf>

clients, their partners, their opponents and the courts in the face of the COVID-19 pandemic.⁸

ABA Formal Opinion 498 (March 2021) echoes this guidance:

The ABA Model Rules of Professional Conduct permit virtual practice, which is technologically enabled law practice beyond the traditional brick-and-mortar law firm. When practicing virtually, lawyers must particularly consider ethical duties regarding competence, diligence, and communication, especially when using technology. In compliance with the duty of confidentiality, lawyers must make reasonable efforts to prevent inadvertent or unauthorized disclosures of information relating to the representation and take reasonable precautions when transmitting such information. Additionally, the duty of supervision requires that lawyers make reasonable efforts to ensure compliance by subordinate lawyers and non-lawyer assistants with the Rules of Professional Conduct, specifically regarding virtual practice policies.⁹

CONCLUSION

It is difficult to imagine that Illinois lawyers have not handled client matters, i.e., practiced Illinois law, while out of the geographic boundaries of Illinois for as long as Abraham Lincoln was riding the 8th Judicial Circuit. While life under the once and future Covid pandemic has accelerated, expanded, and amplified the prevalence of lawyers' extra-geographical practice, it has not created a new ethics quandary. And whether it is transactional work, client interaction, or appearing electronically in court, depositions, or client meetings appears to be irrelevant in our increasingly ethereal practice of law. There is no violation of the Illinois Rules of Professional Conduct for a lawyer to practice Illinois law from a geographic location outside the boundaries of state of Illinois.

However, other geographic jurisdictions may have different perspectives. Illinois-licensed lawyers should check the law and professional conduct rules of the geographic location in which the lawyer intends to practice Illinois law.

Professional Conduct Advisory Opinions are provided by the ISBA as an educational service to the public and the legal profession and are not intended as legal advice. The opinions are not binding on the courts or disciplinary agencies, but they are often considered by them in assessing lawyer conduct.

⁸ <https://www.wisbar.org/formembers/ethics/Ethics%20Opinions/EF-21-02%20Working%20Remotely.pdf>

⁹ https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba-formal-opinion-498.pdf

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