

The ABA Blessed Remote Work. Here's How to Navigate Those Rules.

With the rise in remote work during the pandemic, the ABA issued a formal ethics opinion setting parameters around remote law practice.

BY SARAH J. NEWMAN

On Dec. 16, 2020, the American Bar Association's Standing Committee on Ethics and Professional Responsibility published an ethics opinion that blesses the work arrangements that many lawyers have set up since the COVID-19 pandemic forced lawyers across the country to work remotely. [ABA Opinion 495](#) states that, under certain circumstances, lawyers may remotely practice law while they are physically located in jurisdictions in which they are not licensed.

The opinion impacts not only lawyers who have chosen to relocate during the pandemic—for example, a New York-licensed attorney who has relocated to sunny Florida to ride out the pandemic—but also lawyers living in border communities—for example, lawyers who are licensed and work in Washington, D.C., but are working from home in Virginia and Maryland.

[ABA Model Rule 5.5\(a\)](#) prohibits lawyers from engaging in the unauthorized practice of law. Most states have identical or similar provisions. The rule prohibits lawyers from “establish[ing] an office or other systematic and continuous presence” in a jurisdiction



American Bar Association offices in Washington, DC. Photo: Diego M. Radzinski

where they are not licensed. And it likewise prohibits lawyers from “hold[ing] out to the public or otherwise represent[ing] that the lawyer is admitted to practice law” in that jurisdiction.

As Opinion 495 recognizes, 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 New York-licensed lawyer from practicing New York law, for clients with matters in New York, while that lawyer is in Florida. “For all intents and purposes,” the opinion states, that New York lawyer is “invisible as a lawyer” to the local jurisdiction where the lawyer is weathering out the pandemic, but not licensed.

ABA Opinion 495 clarifies that living and working in a state in which you are not authorized to practice does not automatically run afoul of Model Rule 5.5(a). The opinion explains that a lawyer does not have a “systematic” presence in a jurisdiction merely because they are physically present in that state. “The lawyer’s physical presence in the local jurisdiction is incidental; it is not for the practice of law.”

But ABA Opinion 495 does have important caveats. First, lawyers working remotely from jurisdictions where they are not licensed must not establish a “local office” in that jurisdiction. According to the opinion, that means you cannot list your local address on “websites, letterhead, business cards, or advertising” materials. It also means that lawyers must not “offer to provide legal services in the local jurisdiction.” But so long as a New York attorney continues to practice only New York law while taking advantage of socially distanced Florida beaches, the substance of the attorney’s practice can stay the same.

The opinion next emphasizes that out-of-state practice is in compliance with Model Rule 5.5 only if that lawyer’s remote work arrangement is temporary. That is consistent with Model Rule 5.5(c)’s carveout for out-of-state practice on a “temporary basis.” The opinion cautions that “there is no single definition for what is temporary.” And in the context of COVID-19, “how long that temporary period lasts could vary significantly based on the need to address the pandemic.” Currently, the District of Columbia is the only jurisdiction that has **expressly provided permission** to out-of-state attorneys to work remotely from the District during the pandemic under its temporary-practice carveout.

Once the pandemic is over, lawyers who have the option of not going back to the office may therefore have to get licensed in the jurisdictions where they choose to continue working remotely. Florida, for example, has taken a **hard line on out-of-state lawyers** practicing in Florida beyond working in Florida while on vacation.

In addition to those limitations, the opinion emphasizes that these remote-work requirements hold true only if the jurisdiction in which a lawyer is working does not deem remote practice to constitute the unauthorized practice of law. ABA opinions are persuasive, but not binding. And lawyers should therefore always consult a state’s rules on out-of-state practice before making a decision to relocate.

Of course, remote practice is not new. Even before the pandemic, lawyers routinely practiced law while traveling outside the jurisdictions in which they are licensed. But now that the pandemic has fundamentally altered the way lawyers do their work, remote work may become the new normal, even after law firms reopen their doors. Assuming remote-work options are here to stay, ABA Opinion 495 draws helpful boundaries around remote practice.

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