

# Tip of the Month

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## ABA Issues New Opinion on Lawyers Working Remotely Across State Lines

On December 16, 2020, the American Bar Association (ABA) made a bold move in addressing the growing frustration of many lawyers who feel unreasonably shackled by unauthorized practice of law rules. In Opinion 495, the Standing Committee on Ethics and Professional Responsibility ("Committee") declared: "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." Until now, only a handful of state opinions had addressed this issue. The ABA's view thus provides much needed guidance and relief, especially for lawyers working remotely during the Covid-19 pandemic and those moving from one state to another who need to maintain continuity in their practice while awaiting licensure in their new home state.

Model Rule 5.5(a) generally 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 jurisdiction's rules or laws. Virtually all states have some version of Rule 5.5(a). However, the Committee opined that unless a state has expressly prohibited, by rule, case law or opinion, remote practice across state lines, "a lawyer may practice law pursuant to the jurisdiction(s) in which the lawyer is licensed . . . even from a physical location where the lawyer is not licensed [the 'local jurisdiction'] under specific parameters."

The specific parameters include:

- The lawyer does not advertise ("holding out") to the public an address in the local jurisdiction as an office;
- A local jurisdiction address does not appear on any letterhead, business cards, websites, or other indicia of the lawyer's presence;
- The lawyer does not offer or provide legal services to clients located in the local jurisdiction, unless authorized under the state's temporary practice rules, or as provided under federal law.

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The Committee concluded: "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."

This opinion, like all ABA opinions, is guidance and are not binding on any state bar decisions. Lawyers should carefully review and consider the rules and opinions of the jurisdiction in which they are licensed as well as the local jurisdiction in which they seek to practice remotely or "invisibly." However, it is welcome guidance nonetheless.

*\*\*No portion of this article is intended to constitute legal advice. Be sure to perform independent research and analysis. Any views expressed are those of the author only.*