South Carolina Bar
Continuing Legal Education Division

2024 SC BAR CONVENTION

Breakfast Ethics

"Can a Lawyer—A Program about Professionalism"

Sunday, January 21

SC Supreme Court Commission on CLE Course No. 240013

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Can a Lawyer - A Program about Professionalism

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Can a Lawyer…? (What a google search teaches about ethics)
Program Written Materials

I recently tried a google search that started with the words "Can lawyers…" The phrases that were auto populated by the search engine were interesting. I got to wondering…can lawyers actually do all of those things? In this program we'll explore the answers to those questions.

1. Can a lawyer criticize a judge

I am not a person who things we should be running around making harsh statements about judges. But I am a person who believes strongly in lawyer's freedom of speech. Of course, lawyers' freedom of speech is restricted all the time by a series of rules. In this case that restriction is set forth in Rule 8.2.

But that rule is pretty tailored— it prohibits lawyers from making false statements and that's something no one would disagree with. Maybe that's why, according to an article in the ABA Journal, it's survived First Amendment challenges.[1]

> Rule 8.2. Judicial and legal officials.
>
> (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or a candidate for election or appointment to judicial or legal office.
>
> (b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

[1] https://www.abajournal.com/magazine/article/opinion-helps-define-the-reach-and-scope-of-aba-model-rule-84g, last checked 12/29/2021.

COMMENT

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice. When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

What's nonsensical to me is the informal expansion of the rule into what should be considered legitimate speech. In the program I'm going to discuss an attorney disciplinary decision out of Louisiana entitled, In re: Christine M. Mire, 2015-B-1453. The opinion can be found here: https://www.lasc.org/opinions/2016/15B1453.opn.pdf

2. Can a lawyer turn you in…and the related question…Can a lawyer *have* a lawyer?

Whether a lawyer can turn in a client depends upon whether that lawyer can reveal information relating to the representation. That causes us to review Rule 1.6.

When I teach the rule on confidentiality, I tell my classes that the rule is broken down as follows: There's the general rule, then there are the "two permissions and the exceptions." The idea that we need to keep our information confidential is as elementary as they come. The tougher part is navigating when you are permitted (or required) to reveal information.

The rule states that we can reveal information if we have either express or implied permission. In 1.6(a) we are told that we can reveal information if the client gives "informed consent," which is what I call express permission." We can also reveal if "the disclosure is impliedly authorized to carry out the representation." Obviously, that's the implied permission.

If we're wondering about whether you can turn in a client, you'd probably need to review subsection (b) which establishes the exceptions to confidentiality. Here's a tip — the instances

where you can turn in a client are going to be super limited. It's likely going to have to be in instances where you can prevent future conduct (if at all). Here's the whole rule:

> Rule 1.6. Confidentiality of information
> (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).
> (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
> (1) to prevent reasonably certain death or substantial bodily harm;
> (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
> (3) to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
> (4) to secure legal advice about the lawyer's compliance with these Rules;
> (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or
> (6) to comply with other law or a court order.
> (7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.
> (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

3. Can a lawyer practice in any state

a. Why this is an issue in the practice today

The rule that addresses practicing in a jurisdiction where you're not licensed is Rule 5.5. Much like other rules in the code, it's boring. But today we can put an interesting spin on this rule that will allow us to evaluate it without falling asleep (fingers crossed).

Let's say that you are licensed in New Jersey (the truth is it doesn't matter what state you pick for this part of the hypo…just don't pick Florida because that won't work with the rest of the example). Okay, so you're a licensed practicing attorney in NJ or wherever, and you've had

enough of your home state. You're actively practicing, but you just don't want to live there anymore.

So let's say that you decide to move to Florida. Maybe you do it because you decide to go into semi-retirement…or maybe you do it because you are envious that Disney World is open while other states have lockdowns…or maybe you are a NASCAR fan and you need to live in the shadow of Daytona all year 'round. Maybe it's because COVID forced you out of state…you went to go live in your Florida home to ride things out…and maybe you decide to stay there. Whatever. It doesn't matter (and don't get mad at me because of the lockdown joke…it's just a joke). The only thing that matters for our discussion today is that (a) you move to Florida and (b) you want to continue to work as a lawyer in your former home state.

The manner of the practice that you intend to maintain while living in Florida is important. You don't plan on holding yourself out as a Florida attorney. You're just going to practice NJ law for clients in NJ while you are physically situated in Florida.

This is a situation where Rule 5.5 will be implicated. That's the rule that governs practicing law in a jurisdiction where you're not licensed. But the application of Rule 5.5 to this situation isn't as clear cut as you'd think. Well, it was once clear cut, but now not so much.

For years there wasn't so much debate about Rule 5.5. Many states that were asked to analyze the rule took a relatively hard-line approach to it. But this is very much in flux, given the world we live in today. COVID, as it's done in most of society, has changed everything.

Yes, there have been people maintaining virtual offices for years. They've been pushing for more liberal application of Rule 5.5. Plus, there has been pressure from lawyers who wan to adopt a model more akin to the European approach — one where moving across borders to practice is easier. But the number of people maintaining virtual practices was minuscule compared to the overall number of lawyers in the profession, and the pressure from the pro-moving around camp was moderate. Yes, they both picked up steam at the ABA level, but not so

much at the state level. As a result, there wasn't much pressure for the interpreters of the rules in different states to give in to their desires. But today the entire issue has become far more pressing.

The COVID situation has pushed almost all lawyers into using being more mobile. We are based at home, we are remote, we know how to use distance platforms, etc. As a result, this issue has become more of an immediate concern. And even after the lockdowns are in our rearview mirror, these platforms will still be with us in some significant form. Given today's reality and the likely new look of the future, states are starting to look at Rule 5.5 differently. And that's probably why the Florida Bar issued an advisory opinion on the matter.

b. Understanding Rule 5.5

I've reproduced the rule below in a little bit different fashion than you're used to seeing it. In our code[2] the black-letter law is listed in it's entirety, and it's followed by the commentary. But below I interspersed the commentary because I wanted you to see the portions of the commentary next to the relevant subsection of the black-letter law. Below, the actual rule is in bold, the commentary is in italics, and my words are in regular text (That's if you're reading a black-and-white photocopy of the document. However, if you're viewing the PDF, or a color copy, then my language in this subsection will be in red). This part of my materials don't have much actual analysis, it's just a breakdown of how the the rule is structured. But wait…after that we'll get into plenty of analysis.

[2] This, by the way, all of the rules in these materials are the Delaware Code because it's the same as the ABA code but not subject to copyright restrictions.

The rule starts off by telling us, generally, that you can't practice law where you're not licensed.

Rule 5.5
(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.

> *[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.*
>
> *[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.*
>
> *[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.*

You'll notice that I'm going out of order here. That's because the subsection I'm skipping deals with the hypo above and I want to save it for last.

This next part, subsection (c), addresses those instances where you can practice temporarily in a jurisdiction where you're not licensed. There are many times where a lawyer needs to practice in a foreign jurisdiction for an isolated matter, so the rules provide for temporary admission. Now remember, there are probably other court rules in your jurisdiction that impose requirements for pro hac vice admission. So these rules need to be read in connection with those.

(c) A lawyer admitted in another United States jurisdiction or in a foreign 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;

[5] There are occasions in which a lawyer admitted to practice 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 under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" in paragraph (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

(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;

[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission

pro hac vice before appearing before a tribunal or administrative agency, this rule requires the lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

(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

[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services 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. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

(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.

[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the

jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law. Lawyers desiring to provide pro bono legal services on a temporary basis in a jurisdiction that has been affected by a major disaster, but in which they are not otherwise authorized to practice law, as well as lawyers from the affected jurisdiction who seek to practice law temporarily in another jurisdiction, but in which they are not otherwise authorized to practice law, should consult Supreme Court Rule 58 on Provision of Legal Services Following Determination of Major Disaster.

Subsections (d) and (e) address a few categories that don't fit neatly into the regular rules of admission, Those two categories are (1) In-house counsel, and (2) lawyers who practice federal law. In both of those instances you might have lawyers who don't work in a state where they are licensed. You could imagine that someone who is in-house counsel for a company might be working in the offices of one of those companies and those offices might not be located in a state where the lawyer is licensed. I enhanced the font of the rule in these sections to emphasize the key phrases:

(d)[3] A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[3] Subsections (d) and (e) are the ABA's version because there is a tremendous amount of variation from state-to-state in these sections.

(1) are provided to the lawyer's employer or its organizational affiliates, are not services for which the forum requires pro hac vice admission; and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or
(2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.

[16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.

[17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

(e) For purposes of paragraph (d):

(1) the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and subject to effective regulation and discipline by a duly constituted professional body or a public authority; or,
(2) the person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction must be authorized to practice under this Rule by, in the exercise of its discretion, [the highest court of this jurisdiction].

[18] Paragraph (d)(2) recognizes that a U.S. or foreign lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent. See, e.g., Model Rule on Practice Pending Admission.

[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

[20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4(b).

[21] Paragraphs (c) and (d) do not authorize communications advertising legal services in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services in this jurisdiction is governed by Rules 7.1 to 7.3.

c. The issue we're faced with today.

Now let's double back to subsection (b)…and let's also get rid of the red font.

You'll notice that there was an important difference between subsection (c) and subsections (d)/(e). The difference was the word "temporary" vs, "systematic and continuous presence."

- In subsection (c), the Rules were talking about you're average, run-of-the-mill lawyer who, for some reason, needs to practice in a jurisdiction where they're not licensed **temporarily**.
- In subsection (d)/(e) the Rules were talking about a lawyer who is either in-house or doing federal law and wants to practice in a jurisdiction where they are not licensed **permanently**.

Well, what about a lawyer who is (i) not licensed in a particular jurisdiction, (ii) is not in-house counsel, and (iii) does not do federal law…can that lawyer **permanently** practice in a state where they are not licensed? The answer under the rules is no. That's where Rule (b) comes in.

(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.

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present

here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).

Read it carefully — subsection (a) says that a lawyer who is not admitted to practice in the state can not have a systematic and continuous presence in that state *for the practice of law*. It might as well say, *a person who is not licensed in that state shall not have a systematic and continuous presence for the practice of law at all, regardless of where you're licensed and regardless of what you're practicing. If you're not licensed in this state, you can't practice here at all*.

And note that the rule doesn't make a distinction about whether you're practicing in an office, or out of your house. It says that you can't have a "systematic and continuous presence." That's it. No systematic and continuous presence at all. Anywhere. For any law. Of any state.

This concept was supported by caselaw, somewhat. In Gould v. Harkness, 470 F.Supp.2d 1357 (S.D. Fla. 2006), a New York-licensed lawyer was not permitted to advertise in Florida for prospective clients who might need help with New York legal matters or federal administrative practice. I said that it was supported "somewhat" because the Gould case talked about advertising, and that could be seen as a bit of a differs issue. But the lawyer in question was not going to advertise for anything other than the work he was going to do in the state where he was licensed.

The bottom line is that the traditional rule provided that you can't be licensed in State A, but open a law office in State B (where you are not licensed) even if all of the work you do in that office will be restricted to work for the state where you are licensed.

But that is changing, sort of.

In 2020 the Florida Bar Standing Committee on the Unlicensed Practice of Law was asked to opine on a question (hold your breath, here comes a long sentence…). Would it be considered "the unlicensed practice of law" for an attorney who was domiciled in Florida but

licensed in New Jersey and employed by a New Jersey firm to work remotely from his Florida home solely on matters that concern federal intellectual property rights and not Florida law and without having or creating a public presence or profile in Florida as an attorney? FAO #2019-4, Proposed Advisory opinion dated August 17, 2020.

Note that they said he wouldn't have a "public presence" as an attorney, They didn't claim he wouldn't have a "systematic and continuous presence" because he would, in fact, have a systematic and continuous presence…and that's why the lawyer needed the advisory opinion. Because working out of your home in one state while doing work for people in another state is a systematic and continuous presence for the practice of law. Sure, the systematic and continuous presence would be primarily residential since his practice would be something that occurs in his home. And one might argue that that, alone, isn't what the rule contemplated. The problem is the answer is not so clear. The rule seems to cover those situations and that's probably why the opinion was requested.

Well, the good guys won (at least that's how I see it), The Florida Bar agreed that this situation was not forbidden. Specifically they stated:

> "It is the opinion of the Standing Committee that the Petitioner who simply establishes a residence in Florida and continues to provide legal work to out-of-state clients from his private Florida residence under the circumstances described in this request does not establish a regular presence in Florida for the practice of law. Consequently, it is the opinion of the Standing Committee that it would not be the unlicensed practice of law for Petitioner, a Florida domiciliary employed by a New Jersey law firm (having no place of business or office in Florida), to work remotely from his Florida home solely on matters that concern federal intellectual property rights (and not Florida law) and without having or creating a public presence or profile in Florida as an attorney." FAO #2019-4 at 8-9

The American Bar Association also chimed in on this issue, and they arrived at the same decision as Florida. There is one part of the ABA's opinion, however, that made it clear why this issue needed to be addressed. Look at how deep into the weeds the drafters got in this opinion. They focus on dictionary definitions!

> Model Rule 5.5(b)(1) prohibits a lawyer from "establish[ing] an office or other systematic and continuous presence in [the] jurisdiction [in which the lawyer is not licensed] for the practice of law." Words in the rules, unless otherwise defined, are given their ordinary meaning. "Establish" means "to found, institute, build, or bring into being on a firm or stable basis." [FN] A local office is not "established" within the meaning of the rule by the lawyer working in the local jurisdiction if the lawyer does not hold out to the public an address in the local jurisdiction as an office and a local jurisdiction address does not appear on letterhead, business cards, websites, or other indicia of a lawyer's presence. [FN] Likewise it does not "establish" a systematic and continuous presence in the jurisdiction for the practice of law since the lawyer is neither practicing the law of the local jurisdiction nor holding out the availability to do so. The lawyer's physical presence in the local jurisdiction is incidental; it is not for the practice of law. Conversely, a lawyer who includes a local jurisdiction address on websites, letterhead, business cards, or advertising may be said to have established an office or a systematic and continuous presence in the local jurisdiction for the practice of law. ABA Opinion 495 at 2 [footnotes omitted].

It's worth reading the Florida Bar Opinion in it's entirety. It provides the best analysis of this situation. Note that as of the date of these materials, the opinions only "proposed." However, It looks like the State of Florida is ready to formalize the opinion. On January 22, 2021, lawyer Joseph A. Corsmeier posted about the matter on his blog entitled Lawyer Ethics Alert Blogs. Apparently, the Unauthorized Practice of Law Standing committee issued a notice which states, "The bar filed the proposed opinion with the Supreme Court of Florida on August 17, 2020. The briefing period ended and the proposed advisory opinion is pending final Court action."[4]

4. Can a lawyer be a real estate agent

If a lawyer wants to get into another business we might need to comply with Rule 5.7 entitled, "Responsibilities Regarding Law-related Services." This happens to be a bit more of a concern lately because over the past several decades we've seen the practice take on more attributes of being a "business," (much to the chagrin of both the ethics rules and purists across the country). Some lawyers who want to increase the amount of cash, coin, cheddar cheese, moolah, gelt, what-have-you, that they put in their pocket choose to branch out into law-related activity. Rule 5.7 is designed with those situations. Comment [9] of that rule

[4] https://jcorsmeier.wordpress.com/category/proposed-advisory-opinion-fao-2019-4/, last checked by the author on January 27, 2021.

explains that, “Examples of law-related services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting.” The black letter portion of the rule reads:

> Rule 5.7. Responsibilities regarding law-related services
>
> (a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:
>
> (1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or
>
> (2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.
>
> (b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

So why do we have this rule? Remember— lawyers are always expected to behave like lawyers. We may not be required to be working as a lawyer every moment of our lives, but we are expected to behave in a manner that is consistent with the professional ideals of the profession at every moment of our life. That’s exactly what Rule 5.7(a) is saying. It reminds us that even in situations where we are providing services that aren’t actually legal services, we’re still subject to the rules. Of course, some rules are more far reaching than others. The rule on Misconduct for instance (8.4(c)) would apply to plenty of conduct that is unrelated to the practice of law. However, Rule 5.7(a)1) is tailored to address those non-lawyer services that are in some way performed in conjunction with legal services. The concept is the same, in both. As a lawyer, you’re subject to the rules…even in certain circumstances where you’re not acting as a lawyer. Comment [2] makes that clear. In fact, it even notes that Rule 5.7 could be applied to a non-client:

> [2] Rule 5.7 applies to the provision of law-related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law-related

> services are performed and whether the law-related services are performed through a law firm or a separate entity. The Rule identifies the circumstances in which all of the Rules of Professional Conduct apply to the provision of law-related services. Even when those circumstances do not exist, however, the conduct of a lawyer involved in the provision of law-related services is subject to those Rules that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. See, e.g., Rule 8.4.

In addition, we can see a connection to the concept addressed in the discussion about Rule 3.9. above. Lawyers can't hide, and we need to clear up misconceptions when we're dealing with vulnerable people- or at least with people who might be easily confused by some situation. That is readily apparent in the first comment to the rule:

> [1] When a lawyer performs law-related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflicting interests, and obligations of a lawyer to maintain professional independence apply to the provision of law-related services when that may not be the case.

I want to make two other points about Rule 5.7, but these points are really larger lessons about proper attorney behavior. Comment [6] addresses situations where a lawyer must communicate to the client about the fact that the relationship with the person will not be a lawyer-client relationship. What's important here is that the rule talks about the quality of the conversation, and the timing of that conversation:

> [6] In taking the reasonable measures referred to in paragraph (a)(2) to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Rules of Professional Conduct, the lawyer should communicate to the person receiving the law-related services, in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing.

This is consistent with many sections of the code (See the rules of conflicts, like 1.7 for example). The drafters have made it clear many times that our conversations with clients (and

non-clients in some situations) needs to have depth. It can't just be a cursory talk, or an "oh by the way" sort of thing. To protect yourself, spend time when you speak with people about situations like this, read the comments, and memorialize your conversation with as much detail as possible shortly (preferably immediately) after having the talk.

The other wider-ranging point I want to make is to reiterate how important it is to read the commentary to each rule. Not just for obvious reasons, but for one specific reason— it's common that the rules cross reference one another. Sometimes that happens in the body of the rule itself, but it's even more prevalent in the comments. That's because the comments are the places where the drafters elaborate and provide further explanation about related concepts that you just can fit into the black letter law. Just look at comment [10] to Rule 5.7 to see how vital it is to read the comments to these rules. Look at how many different code sections are referenced!

> [10] When a lawyer is obliged to accord the recipients of such services the protections of those Rules that apply to the client-lawyer relationship, the lawyer must take special care to heed the proscriptions of the Rules addressing conflict of interest (Rules 1.7 through 1.11, especially Rules 1.7(a)(2) and 1.8(a), (b) and (f)), and to scrupulously adhere to the requirements of Rule 1.6 relating to disclosure of confidential information. The promotion of the law-related services must also in all respects comply with Rules 7.1 through 7.3, dealing with advertising and solicitation. In that regard, lawyers should take special care to identify the obligations that may be imposed as a result of a jurisdiction's decisional law

5. Can a lawyer act as a witness

> Rule 3.7 Lawyer as Witness
>
> (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
> (1) the testimony relates to an uncontested issue;
> (2) the testimony relates to the nature and value of legal services rendered in the case; or
> (3) disqualification of the lawyer would work substantial hardship on the client.
> (b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

6. **Can a lawyer defend himself in court?**

    Pro se…and Confidentiality issue

7. **Can a lawyer date a client**

8. **Can a lawyer accept a gift from a client**

9. **Can a lawyer drop a client** (in description)

    You may HAVE to! Rule 1.16

10. **Can a lawyer drop a client for lying**

11. **Can a lawyer represent a family member in court** (in description)

12. **Can a lawyer represent you in court**

13. **Can a lawyer represent a friend**