

**RULE 5.5: UNAUTHORIZED PRACTICE OF LAW;  
AUTHORIZATION TO PRACTICE LAW**

**(ETHICS COMMITTEE DRAFT 3/14/02)**

- (a) A lawyer shall not practice law in a jurisdiction where doing so violates the regulations governing who may practice law, or assist another person in doing so.**
  
- (b) A lawyer admitted and in good standing in another jurisdiction, but not licensed to practice in this jurisdiction may**
  - (1) if so authorized by law or order, appear before a tribunal in this or another jurisdiction, or prepare for a potential proceeding in a tribunal before which the lawyer, or someone the lawyer is assisting, has been or reasonably expects to be authorized to appear; and**
  
  - (2) provide legal services in this jurisdiction other than those referred to in paragraph (b)(1), if the lawyer**
    - (i) Is an employee of a client and acts on the client's behalf or on behalf of the client's organizational affiliate;**
    - (ii) temporarily provides the services with respect to a matter arising out of, or reasonably related to, the lawyer's practice in another jurisdiction in which the lawyer is authorized to practice;**
    - (iii) is associated in the matter with a lawyer who is admitted to practice in this jurisdiction and actively participates in the representation; or**
    - (iv) is authorized by federal or other law to perform the services.**

**COMMENT**

[1] A lawyer may practice law only where authorized by the law of the jurisdiction or an order of a tribunal. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by a lawyer assisting another person. Paragraph (b) describes circumstances in which a lawyer not licensed in this jurisdiction, but licensed elsewhere, may practice law in this jurisdiction. For purposes of paragraph (b) the term "jurisdiction" means any state, territory or commonwealth of the United States.

**Unauthorized Practice of Law**

[2] The definition of the practice of law is established by the law of each jurisdiction, including its court rules, and varies from one jurisdiction to another. A jurisdiction's custom of confining the practice of law to members of the bar protects the public from the provision of legal services by unqualified persons.

[3] Paragraph (a) does not prohibit a lawyer from employing the services of paraprofessionals and delegating legal functions to them, so long as the lawyer supervises the delegated work and retains responsibility for it. See Rule 5.3.

[4] Nor does paragraph (a) prohibit a lawyer from providing professional advice and instruction to non-lawyers whose employment requires knowledge of law, for example, claims adjusters, employees of commercial or financial institutions, social workers, accountants, or persons employed in government agencies.

[5] Lawyers may also assist non-lawyers who are authorized by law to provide legal services, such as those permitted to represent others before certain administrative agencies such as the Social Security Administration. Finally, lawyers may also counsel non-lawyers who are engaged in legal proceedings *pro se*.

[6] A lawyer who is not licensed to practice in this jurisdiction violates paragraph (a) if the lawyer establishes a continuous presence in this jurisdiction for the systematic practice of law, except as authorized by paragraph (b) or other law. Moreover, a lawyer who is not licensed in this jurisdiction would violate Rules 7.1(a) and 7.5(b) were the lawyer to hold out to the public that the lawyer is licensed to practice here.

### **Authorization to Practice Law**

[7] Lawyers licensed in another jurisdiction, but not in this jurisdiction, may practice law in this jurisdiction in circumstances where they do not create a significant risk to the interests of their clients, the courts, or the public. Paragraph (b) identifies five (5) such situations. These situations are not, however, intended to be exclusive. Other conduct also may be the authorized practice of law. For example, nothing in this Rule restricts a lawyer from providing legal services that are governed primarily by federal law, international law, law of a foreign nation, or the law of a jurisdiction in which the lawyer is authorized to practice.

[8] Lawyers not licensed in a jurisdiction may be authorized by law or order of a tribunal, including an administrative agency or grand jury, to appear before the tribunal or agency. Under paragraph (b)(1), a lawyer does not violate this Rule when the lawyer makes such appearance. Nor does a lawyer violate this Rule when the lawyer engages in conduct in anticipation of a proceeding, such as factual investigation and discovery conducted in connection with a litigation or other proceeding in which the lawyer or someone whom the lawyer is assisting has been or reasonably expects to be admitted.

[9] Paragraph (b)(2)(i) recognizes that lawyers may be hired by their clients as employees. Because in this circumstance the lawyer's client is unlikely to be deceived about the training and expertise of the lawyer, the lawyer is free to act on behalf of such a client without violating this Rule. The lawyer is also free to act on behalf of entities that control, are controlled by, or are under common control of the employer, or on behalf of the client's other employees in connection with the employer's matters.

[10] Paragraph (b)(2)(ii) recognizes that many matters require that lawyers perform services temporarily in this jurisdiction on behalf of clients in circumstances in which *pro hac vice* admission is unavailable. Examples of such temporary legal services include counseling clients, transactional work, negotiations with private parties or government officers or employees, appearance in administrative or rule-making proceedings, or alternative dispute resolution proceedings. Even though a lawyer may provide such legal services on a recurring basis, or for an extended period of time, the services may nevertheless be considered temporary. See, however, Comment [6].

[11] Paragraph (b)(2)(ii) also requires that the lawyer's temporary services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is licensed. 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 licensed. 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, the client might have contacted the lawyer there, or the law of that jurisdiction may be at issue. The necessary relationship might also 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.

[12] Paragraph (b)(2)(iii) recognizes that a non-licensed lawyer's association with a lawyer licensed to practice in this jurisdiction is likely to protect the interests of both clients and the public. The lawyer admitted to practice in this jurisdiction, however, must not serve solely as a conduit for an out-of-state lawyer, but must actively participate in and share responsibility for the representation of the client.

[13] Paragraph (b)(2)(iv) recognizes that a lawyer may perform 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.

[14] A lawyer who practices law in this jurisdiction pursuant to paragraph (b) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).