



## The Ethics Corner

*I am working on a large real estate acquisition that includes significant properties in six different states, none of which are in my bar license jurisdiction, and I am being sent to each property for due diligence. Should I worry about my due diligence work being attacked as the unauthorized practice of law?*

In the first place, you must check each state's unauthorized practice of law statutes and ABA Model Rule 5.5. The unauthorized practice of law (UPL) rules and regulations are found not only in Model Rule 5.5 but also in each state's code. Some states (Texas, for example) have a strict UPL statute as well as a UPL Committee (comprising lawyers and nonlawyers) appointed by the Texas Supreme Court.

For further purposes of this analysis, I will use the ABA Model Rules, because each state has a different standard. You must not forget, however, to check each state's code or statutes.

Good old Rule 5.5(c) reads as follows (and I am including subsections (a) and (b) of Model Rule 5.5 for ease of reference):

### **Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law**

- (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

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**The Ethics Corner Editor:** Adam J. Sigman, Maynard Cooper & Gale PC, 1901 Sixth Avenue North, 2400 Regions/Harbert Plaza, Birmingham, AL 35203, [asigman@maynardcooper.com](mailto:asigman@maynardcooper.com).

- (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.

For purposes of this answer, I am going to assume that all of the due diligence work is reasonably related to your practice in your jurisdiction *and* your client is in your jurisdiction. That should put you within the bounds of subsection (c)(4).

Because it is so critical for this analysis and answer, I am compelled to reiterate that you must check the exact

wording of each state's UPL statute. Each state's rules and case law will most certainly affect the framework of issues and ensuing analysis to answer your question. I would also recommend that you check out William T. Barker's article entitled *Extrajurisdictional Practice by Lawyers*, 56 Bus. Law. 1501 (2001), which surveys UPL case law among the states.

In response to UPL litigation, in 2002 the ABA amended Model Rule 5.5 (which is set out above). The amended Model Rule 5.5 permits multijurisdictional real estate practice (as you have referenced in your question) on a temporary basis provided such practice is (1) temporary and (2) reasonably related to your practice in your state of license.

With regard to both issues raised above, there is no bright line test. Rather, a variety of factors need to be considered to determine whether the services provided are temporary and also whether a reasonable relationship exists to your practice in your state. For example, on the latter issue, some factors to consider are whether the client has engaged you before, whether the client is a resident or is located in your state or in the state where the property in question is located, and so on.

Also, please remember that engaging local counsel is recognized by the Model Rules as a quasi-safe harbor provided that the local counsel actively participates in the representation. This is mentioned in the comments to the amended Model Rule 5.5. Perhaps that is something to consider for your analysis as well.

Good luck!

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If you or anyone reading this would like to be part of *The Ethics Corner*, or to discuss this issue or a host of other tricky ethics issues we are faced with every day, join one of the Divisions' Ethics Committees by e-mailing Adam J. Sigman at [asigman@maynardcooper.com](mailto:asigman@maynardcooper.com) (for the RP side) or Patricia H. Char at [pat.char@klgates.com](mailto:pat.char@klgates.com) (for the TE side). ■