

1 Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law.

2 (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the
3 legal profession in that jurisdiction, or assist another in doing so.

4 (b) A lawyer who is not admitted to practice in this jurisdiction: ~~shall not~~:

5 (1) must not, except as authorized by these Rules or other law, establish a ~~n~~ public-
6 facing office ~~or other systematic and continuous presence~~ in this jurisdiction for the
7 practice of law; ~~or~~

8 (2) must not hold out to the public or otherwise represent that the lawyer is
9 admitted to practice law in this jurisdiction; ~~or~~

10 (3) may, while physically located in this jurisdiction, provide legal services remotely
11 to clients in a jurisdiction where the lawyer is admitted, so long as the lawyer does
12 not establish a public-facing office in this jurisdiction and complies with subsection
13 (b)(2).

14 (c) A lawyer admitted in another United States jurisdiction, and not disbarred or
15 suspended from practice in any jurisdiction, may provide legal services on a temporary
16 basis in this jurisdiction that:

17 (1) are undertaken in association with a lawyer who is admitted to practice in this
18 jurisdiction and who actively participates in the matter;

19 (2) are in or reasonably related to a pending or potential proceeding before a
20 tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is
21 assisting, is authorized by law or order to appear in such proceeding or reasonably
22 expects to be so authorized;

23 (3) are in or reasonably related to a pending or potential arbitration, mediation or
24 other alternative dispute resolution proceeding in this or another jurisdiction, if the
25 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.

(d) A lawyer admitted in another United States jurisdiction and not disbarred or suspended from practice in any jurisdiction may provide legal services through an office or other systematic and continuous presence in this jurisdiction without admission to the Utah State Bar if:

(1) the services are provided to the lawyer's employer or its organizational affiliates while the lawyer has a pending application for admission to the Utah State Bar and are not services for which the forum requires pro hac vice admission; or

(2) the services provided are authorized by specific federal or Utah law or by applicable rule.

Comment

[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's 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. The "practice of law" in Utah is defined in Rule 14-802(b)(1), Authorization to Practice Law, of the Supreme Court Rules of Professional Practice. This Rule does not prohibit a lawyer from employing the services of paraprofessionals

52 and delegating functions to them, so long as the lawyer supervises the delegated work
53 and retains responsibility for their work. See Rule 5.3.

54 [2a] The Utah rule modifies the second sentence of ABA Comment [2] to reflect and be
55 consistent with Rule 14-802(b)(1), Authorization to Practice Law, of the Supreme Court
56 Rules of Professional Practice, which both defines the “practice of law” and expressly
57 authorizes nonlawyers to engage in some aspects of the practice of law as long as their
58 activities are confined to the categories of services specified in that rule.

59 [3] A lawyer may provide professional advice and instruction to nonlawyers whose
60 employment requires knowledge of the law, for example, claims adjusters, employees
61 of financial or commercial institutions, social workers, accountants and persons
62 employed in government agencies. Lawyers also may assist independent nonlawyers,
63 such as paraprofessionals, who are authorized by the law of a jurisdiction to provide
64 particular law-related services. In addition, a lawyer may counsel nonlawyers who wish
65 to proceed pro se.

66 [4] Other than as authorized by law or this Rule, a lawyer who is not admitted to
67 practice generally in this jurisdiction violates paragraph (b)(1) if the lawyer establishes
68 ~~an public-facing office or other systematic and continuous presence~~ in this jurisdiction
69 for the practice of law. ~~Presence may be systematic and continuous even if the lawyer is~~
70 ~~not physically present here.~~ Such a lawyer must not hold out to the public or otherwise
71 represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules
72 7.1(a) ~~and 7.5(b).~~

73 [4a] Utah's Rule 5.5(b) differs from the ABA Model Rule by recognizing in paragraph
74 (b)(3) that systematic and continuous physical presence in Utah while providing legal
75 services remotely to clients in a jurisdiction where the lawyer is admitted does not in
76 itself violate this Rule.

77 [5] There are occasions in which a lawyer admitted to practice in another United States
78 jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may

79 provide legal services on a temporary basis in this jurisdiction under circumstances that
80 do not create an unreasonable risk to the interests of their clients, the public or the
81 courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so
82 identified does not imply that the conduct is or is not authorized. With the exception of
83 paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office
84 or other systematic and continuous presence in this jurisdiction without being admitted
85 to practice generally here.

86 [6] There is no single test to determine whether a lawyer's services are provided on a
87 "temporary basis" in this jurisdiction and may therefore be permissible under paragraph
88 (c). Services may be "temporary" even though the lawyer provides services in this
89 jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer
90 is representing a client in a single lengthy negotiation or litigation.

91 [7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any
92 United States jurisdiction, which includes the District of Columbia and any state,
93 territory or commonwealth of the United States. The word "admitted" in paragraphs (c)
94 and (d) contemplates that the lawyer is authorized to practice in the jurisdiction in
95 which the lawyer is admitted and excludes a lawyer who while technically admitted is
96 not authorized to practice, because, for example, the lawyer is on inactive status.

97 [8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if
98 a lawyer admitted only in another jurisdiction associates with a lawyer licensed to
99 practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted
100 to practice in this jurisdiction must actively participate in and share responsibility for
101 the representation of the client.

102 [9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by
103 law or order of a tribunal or an administrative agency to appear before the tribunal or
104 agency. This authority may be granted pursuant to formal rules governing admission
105 pro hac vice or pursuant to informal practice of the tribunal or agency. Under
106 paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a

107 tribunal or agency pursuant to such authority. To the extent that a court rule or other
108 law of this jurisdiction requires a lawyer who is not admitted to practice in this
109 jurisdiction to obtain admission pro hac vice before appearing before a tribunal or
110 administrative agency, this Rule requires the lawyer to obtain that authority.

111 [10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction
112 on a temporary basis does not violate this Rule when the lawyer engages in conduct in
113 anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is
114 authorized to practice law or in which the lawyer reasonably expects to be admitted pro
115 hac vice. Examples of such conduct include meetings with the client, interviews of
116 potential witnesses and the review of documents. Similarly, a lawyer admitted only in
117 another jurisdiction may engage in conduct temporarily in this jurisdiction in
118 connection with pending litigation in another jurisdiction in which the lawyer is or
119 reasonably expects to be authorized to appear, including taking depositions in this
120 jurisdiction.

121 [11] When a lawyer has been or reasonably expects to be admitted to appear before a
122 court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who
123 are associated with that lawyer in the matter, but who do not expect to appear before
124 the court or administrative agency. For example, subordinate lawyers may conduct
125 research, review documents and attend meetings with witnesses in support of the
126 lawyer responsible for the litigation.

127 [12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to
128 perform services on a temporary basis in this jurisdiction if those services are in or
129 reasonably related to a pending or potential arbitration, mediation or other alternative
130 dispute resolution proceeding in this or another jurisdiction, if the services arise out of
131 or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is
132 admitted to practice. The lawyer, however, must obtain admission pro hac vice in the
133 case of a court-annexed arbitration or mediation or otherwise if court rules or law so
134 require.

135 [13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide
136 certain legal services on a temporary basis in this jurisdiction that arise out of or are
137 reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is
138 admitted but are not within paragraphs (c)(2) or (c)(3).

139 [13a] The last sentence in Comment [13] to ABA Model Rule 5.5 has been omitted to
140 comport with Utah's definition of the "practice of law" in Rule 14-802(b)(1).

141 [14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably
142 related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A
143 variety of factors evidence such a relationship. The lawyer's client may have been
144 previously represented by the lawyer or may be resident in or have substantial contacts
145 with the jurisdiction in which the lawyer is admitted. The matter, although involving
146 other jurisdictions, may have a significant connection with that jurisdiction. In other
147 cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or
148 a significant aspect of the matter may involve the law of that jurisdiction. The necessary
149 relationship might arise when the client's activities or the legal issues involve multiple
150 jurisdictions, such as when the officers of a multinational corporation survey potential
151 business sites and seek the services of their lawyer in assessing the relative merits of
152 each. In addition, the services may draw on the lawyer's recognized expertise
153 developed through the regular practice of law on behalf of clients in matters involving a
154 particular body of federal, nationally-uniform, foreign or international law.

155 [15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to
156 practice in another United States jurisdiction, and is not disbarred or suspended from
157 practice in any jurisdiction, may establish an office or other systematic and continuous
158 presence in this jurisdiction for the practice of law as well as provide legal services on a
159 temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is
160 admitted to practice law in another jurisdiction and who establishes an office or other
161 systematic or continuous presence in this jurisdiction must become admitted to practice
162 law generally in this jurisdiction.

163 [15a] Utah's Rule 5.5(d) differs from the ABA Model Rule by requiring a person
164 providing services to the lawyer's employer to have submitted an application for
165 admission to the Bar, such as an application for admission of attorney applicants under
166 Supreme Court Rules of Professional Practice, Rule 14-704; admission by motion under
167 Rule 14-705; or admission as House Counsel under Rule 14-719.

168 [15b] Utah Rule 5.5 does not adopt the ABA's provisions dealing with foreign lawyers,
169 as other rules in Article 7 of the Rules Governing the Utah State Bar cover this matter.

170 [16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal
171 services to the client or its organizational affiliates, i.e., entities that control, are
172 controlled by or are under common control with the employer. This paragraph does not
173 authorize the provision of personal legal services to the employer's officers or
174 employees. The paragraph applies to in-house corporate lawyers, government lawyers
175 and others who are employed to render legal services to the employer. The lawyer's
176 ability to represent the employer outside the jurisdiction in which the lawyer is licensed
177 generally serves the interests of the employer and does not create an unreasonable risk
178 to the client and others because the employer is well situated to assess the lawyer's
179 qualifications and the quality of the lawyer's work.

180 [17] If an employed lawyer establishes an office or other systematic presence in this
181 jurisdiction for the purpose of rendering legal services to the employer under
182 paragraph (d)(1), the lawyer is subject to Utah admission and licensing requirements,
183 including assessments for annual licensing fees and client protection funds, and
184 mandatory continuing legal education.

185 [18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a
186 jurisdiction in which the lawyer is not licensed when authorized federal or other law,
187 which includes statute, court rule, executive regulation or judicial precedent.

188 [18a] The Utah version of Paragraph (d)(2) clarifies that a lawyer not admitted to
189 practice in Utah may provide legal services under that paragraph only if the lawyer can

190 cite specific federal or state law or an applicable rule that authorizes the services. See,
191 e.g., Rule DUCivR 83-1.1, Rules of Practice of the United States District Court of the
192 District of Utah; Rule 14-804 of the Supreme Court Rules of Professional Practice,
193 admission for military-lawyer practice; Rule 14-719(d)(2), which provides a six-month
194 period during which an in-house counsel is authorized to practice before submitting a
195 House Counsel application; practice as a patent attorney before the United States Patent
196 and Trademark Office.

197 [19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or
198 otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

199 [20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to
200 paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to
201 practice law in this jurisdiction. For example, that may be required when the
202 representation occurs primarily in this jurisdiction and requires knowledge of the law
203 of this jurisdiction. See Rule 1.4(b).

204 [21] Paragraphs (c) and (d) do not authorize communications advertising legal services
205 in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Rule
206 7.1 governs whether and how lawyers may communicate the availability of their
207 services in this jurisdiction. are governed by Rules 7.1 to 7.5.

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