

COMMITTEE ON DISCIPLINARY RULES AND REFERENDA PROPOSED RULE CHANGES

Rule 5.05. Unauthorized Practice of Law; Remote Practice of Law

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the committee publishes the following proposed rule. The committee will accept comments concerning the proposed rule through April 13, 2023. Comments can be submitted at texasbar.com/CDRR or by email to cdrr@texasbar.com. The committee will hold a public hearing on the proposed rule by teleconference on April 12, 2023, at 10 a.m. CDT. For teleconference participation information, please go to texasbar.com/cdr/participate.

Proposed Rule (Redline Version)

Rule 5.05. Unauthorized Practice of Law; Remote Practice of Law

- (a) A lawyer shall not:
- (1) ~~(a)~~ practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
 - (2) ~~(b)~~ assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.
- (b) Unless authorized by other law, only a lawyer who is admitted to practice in this jurisdiction may hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted to practice law in a jurisdiction outside this state, and not disbarred or suspended from practice or the equivalent thereof in any jurisdiction, may provide legal services solely to the lawyer's employer or its organizational affiliates, provided that this jurisdiction does not require pro hac vice admission.
- (d) A lawyer who is not admitted to practice in this State, but who is authorized to practice law in one or more jurisdictions, may practice law from a temporary or permanent residence or other location in this jurisdiction, provided that:
- (1) The lawyer does not use advertising, oral representations, business letterhead, websites, signage, business cards, email signature blocks, or other communications to hold themselves out, publicly or privately, as authorized to practice law in this jurisdiction, or as having an office for the practice of law in this jurisdiction;
 - (2) The lawyer does not solicit or accept residents or citizens of Texas as clients on matters that the lawyer knows primarily require advice on the state or local law of Texas, except as permitted by Texas or federal law; and
 - (3) When the lawyer knows or reasonably should know that a person with whom the lawyer is dealing mistakenly believes that the lawyer is authorized to practice law in this jurisdiction, the lawyer shall make diligent efforts to correct that misunderstanding.

Comment:

[1] Courts generally have prohibited the unauthorized practice of law because of a perceived need to protect prospective clients from the mistakes of the untrained and the schemes of the unscrupulous, who are not subject to the judicially imposed disciplinary standards of competence, responsibility, and accountability.

[2] ~~Neither statutory nor judicial definitions offer clear guidelines as to what constitutes the practice of law or the unauthorized practice of law. All too frequently, the definitions are so broad as to be meaningless and amount to little more than the statement that "the practice of law" is merely whatever lawyers do or are traditionally understood to do. 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. The definition of the practice of law is established by law and varies from one jurisdiction to another. Judicial development of the concept of "law practice" should be broad enough to cover all situations where there is rendition of legal services for others that calls for the professional judgment of a lawyer and where there is a need for the protections afforded by the regulation of the legal profession.~~

[3] ~~Rule 5.05 does not attempt to define what constitutes the "unauthorized practice of law" but leaves the definition to judicial development. Judicial development of the concept of "law practice" should emphasize that the concept is broad enough—but only broad enough—to cover all situations where there is rendition of services for others that call for the professional judgment of a lawyer and where the one receiving the services generally will be unable to judge whether adequate services are being rendered and is, therefore, in need of the protection afforded by the regulation of the legal profession. Competent professional judgment is the product of a trained familiarity with law and legal processes; a disciplined, analytical approach to legal problems, and a firm ethical commitment; and the essence of the professional judgment of the lawyer is the lawyer's educated ability to relate the general body and philosophy of law to a specific legal problem of a client. In representing a client with respect to matters involving the law of other jurisdictions where the lawyer is not licensed, the lawyer may need to consult, with the client's consent, lawyers licensed in the other jurisdiction.~~

[4] ~~Paragraph (b) of Rule 5.05. 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 the work, and maintains a direct relationship with the client, the paraprofessional cannot reasonably be said to have engaged in activity that constitutes the unauthorized practice of law. See Rule 5.03. Likewise, paragraph (b) does not prohibit lawyers from providing professional advice and instructions to nonlawyers whose employment requires knowledge of law. For example, claims adjusters, employees of financial institutions, social workers, abstracters, police officers, accountants, and persons employed in government agencies are engaged in occupations requiring knowledge of law; and a lawyer who assists them to carry out their proper functions is not assisting the unauthorized practice of law. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se, since a nonlawyer who represents himself or herself is not engaged in the unauthorized practice of law, provided that the lawyer supervises and takes responsibility for the work, and maintains a direct relationship with the client.

[5] Authority to engage in the practice of law conferred in any jurisdiction is not necessarily a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where doing so violates the regulation of the practice of law in that jurisdiction. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by individual states. In furtherance of the public interest, lawyers should discourage regulations that unreasonably impose territorial limitations upon the right of a lawyer to handle the legal affairs of a client or upon the opportunity of a client to obtain the services of a lawyer of his or her choice. This rule also does not prohibit lawyers from providing professional advice and instructions to nonlawyers whose employment requires knowledge of law, such as claims adjusters, employees of financial institutions, social workers, abstracters, police officers, accountants, and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se, since a nonlawyer who represents himself or herself is not engaged in the unauthorized practice of law.

Proposed Rule (Clean Version)

Rule 5.05. Unauthorized Practice of Law; Remote Practice of Law

- (a) A lawyer shall not:
- (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
 - (2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.
- (b) Unless authorized by other law, only a lawyer who is admitted to practice in this jurisdiction may hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted to practice law in a jurisdiction outside this state, and not disbarred or suspended from practice or the equivalent thereof in any jurisdiction, may provide legal

services solely to the lawyer's employer or its organizational affiliates, provided that this jurisdiction does not require pro hac vice admission.

- (d) A lawyer who is not admitted to practice in this State, but who is authorized to practice law in one or more jurisdictions, may practice law from a temporary or permanent residence or other location in this jurisdiction, provided that:
- (1) The lawyer does not use advertising, oral representations, business letterhead, websites, signage, business cards, email signature blocks, or other communications to hold themselves out, publicly or privately, as authorized to practice law in this jurisdiction, or as having an office for the practice of law in this jurisdiction;
 - (2) The lawyer does not solicit or accept residents or citizens of Texas as clients on matters that the lawyer knows primarily require advice on the state or local law of Texas, except as permitted by Texas or federal law; and
 - (3) When the lawyer knows or reasonably should know that a person with whom the lawyer is dealing mistakenly believes that the lawyer is authorized to practice law in this jurisdiction, the lawyer shall make diligent efforts to correct that misunderstanding.

Comment:

[1] Courts generally have prohibited the unauthorized practice of law because of a perceived need to protect prospective clients from the mistakes of the untrained and the schemes of the unscrupulous, who are not subject to the judicially imposed disciplinary standards of competence, responsibility, and accountability.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Judicial development of the concept of "law practice" should be broad enough to cover all situations where there is rendition of legal services for others that calls for the professional judgment of a lawyer and where there is a need for the protections afforded by the regulation of the legal profession.

[3] Competent professional judgment is the product of a trained familiarity with law and legal processes. In representing a client with respect to matters involving the law of other jurisdictions where the lawyer is not licensed, the lawyer may need to consult, with the client's consent, lawyers licensed in the other jurisdiction.

[4] This rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, provided that the lawyer supervises and takes responsibility for the work, and maintains a direct relationship with the client.

[5] This rule also does not prohibit lawyers from providing professional advice and instructions to nonlawyers whose employment requires knowledge of law, such as claims adjusters, employees of financial institutions, social workers, abstracters, police officers, accountants, and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se, since a nonlawyer who represents himself or herself is not engaged in the unauthorized practice of law. **TBJ**

