

KENTUCKY BAR ASSOCIATION
UNAUTHORIZED PRACTICE OF LAW OPINION U-67
ISSUED: MARCH 2023

Question: Does a lawyer licensed in another jurisdiction and not licensed in Kentucky, who represents clients solely in the licensing jurisdiction or as permitted by other law or SCR 3.130(5.5)(c) or (d), engage in the unauthorized practice of law by working remotely in Kentucky?

Answer: Qualified no.

References: ABA Formal Opinion 495 (December 16, 2020); SCR 3.020; SCR 3.130(5.5)

PROPOSED OPINION

The question has been raised as to whether a lawyer licensed to practice law in another jurisdiction and not in Kentucky, commits the unauthorized practice of law when that lawyer works remotely in a private office in Kentucky, while only representing clients in the licensing jurisdiction. Present technology has eased the ability of lawyers to work remotely and through electronic means, sometimes representing clients in one jurisdiction while physically present in another jurisdiction. Further, a lawyer may reside and work in different jurisdictions. A lawyer may ethically engage in the practice of law under their licensing jurisdiction, representing clients in matters only relating to the licensing jurisdiction, despite being physically present in Kentucky. Mere presence in Kentucky does not equate to the unauthorized practice of law in Kentucky.

This opinion presupposes that the lawyer is not authorized to practice law in Kentucky by SCR 3.130(5.5)(c) or (d) or other state or federal authorization, and that the lawyer does not hold him or herself out as licensed to practice law in Kentucky; does not advertise in Kentucky; does not solicit clients in Kentucky; and does not publish a professional Kentucky address.

The practice of law is defined in SCR 3.020 as follows:

[A]ny service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities or business relations of one requiring the services.

Working remotely in Kentucky but representing clients in matters that do not involve Kentucky law and relate solely to the practice of law in the lawyer's licensing jurisdiction does not qualify as the practice of law *in Kentucky*. However, any lawyer is cautioned not to run afoul of SCR 3.130(5.5)(b) by establishing or maintaining an office or other presence in Kentucky for the practice of law or holding out to the public or otherwise representing that the lawyer is admitted to practice law in Kentucky, which could also constitute a violation of SCR

3.130(7.10). As provided in ABA Formal Opinion 495, “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.” The physical presence of the lawyer in Kentucky is incidental, as long as the lawyer is not representing clients in Kentucky or establishing an office as outlined above.

The KBA adopts the ABA Formal Opinion 495 in that “The purpose of Model Rule 5.5 (SCR 3.130(5.5)) is to protect the public from unlicensed and unqualified practitioners of law. That purpose is not served by prohibiting a lawyer from practicing the law of a jurisdiction in which the lawyer is licensed, for clients with matters in that jurisdiction, if the lawyer is for all intents and purposes invisible *as a lawyer* to a local jurisdiction where the lawyer is physically located, but not licensed.” As such, a lawyer may practice law as authorized by the lawyer’s licensing jurisdiction in matters solely relating to that jurisdiction, while physically located in Kentucky, even if not licensed in Kentucky, if the lawyer does not hold out the lawyer’s presence or availability to perform legal services in Kentucky or actually provide legal services for matters subject to Kentucky law, unless otherwise authorized.

CONCLUSION

Where a lawyer licensed in another jurisdiction works remotely in Kentucky, representing clients in matters solely relating to the lawyer’s licensing jurisdiction and not relating to Kentucky law, the lawyer is not engaging in the unauthorized practice of law in Kentucky.

Note to Reader

This unauthorized practice opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). Note that the Rule provides in part: “Both informal and formal opinions shall be advisory only.”