



The State Bar of California

Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law (Rule Approved by the Supreme Court, Effective November 1, 2018)

- (a) A lawyer admitted to practice law in California shall not:
 - (1) practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction; or
 - (2) knowingly* assist a person* in the unauthorized practice of law in that jurisdiction.

- (b) A lawyer who is not admitted to practice law in California shall not:
 - (1) except as authorized by these rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; or
 - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in California.

Comment

Paragraph (b)(1) prohibits lawyers from practicing law in California unless otherwise entitled to practice law in this state by court rule or other law. (See, e.g., Bus. & Prof. Code, § 6125 et seq.; see also Cal. Rules of Court, rules 9.40 [counsel pro hac vice], 9.41 [appearances by military counsel], 9.42 [certified law students], 9.43 [out-of-state attorney arbitration counsel program], 9.44 [registered foreign legal consultant], 9.45 [registered legal services attorneys], 9.46 [registered in-house counsel], 9.47 [attorneys practicing temporarily in California as part of litigation], 9.48 [non-litigating attorneys temporarily in California to provide legal services].)

**NEW RULE OF PROFESSIONAL CONDUCT 5.5
(Former Rule 1-300)
Unauthorized Practice of Law; Multijurisdictional Practice of Law**

EXECUTIVE SUMMARY

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) evaluated current rule 1-300 (Unauthorized Practice of Law) in accordance with the Commission Charter. In addition, the Commission considered the national standard of ABA Model Rule 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law). The Commission also reviewed relevant California statutes, rules, and case law relating to the issues addressed by the proposed rules. The result of the Commission’s evaluation is proposed rule 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law).

Rule As Issued For 90-day Public Comment

Proposed rule 5.5 amends current rule 1-300. In substance, it continues the prohibitions in rule 1-300 against aiding any person or entity in the unauthorized practice of law and against a member of the California bar practicing law in another jurisdiction in violation of the regulations of that other jurisdiction. However, the Commission is recommending that the rule also include the Model Rule 5.5 prohibitions against a lawyer who is not admitted to practice in California from maintaining an office or systematic presence in California and falsely holding out that he or she is admitted to practice law in California.

The main issue considered by the Commission in studying this rule was whether to propose paragraph (b) which, similar to the Model Rule, incorporates prohibitions against a lawyer who is not admitted to practice in California from: (i) maintaining an office or systematic presence in California; or (ii) from holding out that he or she is admitted to practice law in California. Although the Commission recognized that such conduct presently is governed by well-established State Bar Act prohibitions against the unlawful practice of law (see Business and Professions Code §6125 et seq.), the Commission nevertheless recommends this amendment to the current rule. Three of the Commission’s reasons for this change are set forth below.

First, proposed rule 5.5 would serve as an entry point for out-of-state lawyers considering whether to practice in California and proposed paragraph (b) alerts such lawyers to limitations on their potential authorization to practice in California even if they believe that they would qualify to do so under one of the multijurisdictional practice of law (“MJP”) provisions in the California Rules of Court (i.e., MJP Rule of Court 9.46 authorizing a registered in-house counsel to engage in a limited practice exclusively for that lawyer’s employer).

Second, proposed paragraph (b) would prohibit all non-admitted lawyers, including those persons authorized to practice in California under the Rules of Court (i.e., under the MJP rules, the pro hac vice rule, and other rules) from holding himself or herself out to the public or otherwise representing that he or she is admitted to practice law in California as a member of the State Bar. For example, a non-admitted lawyer who is given narrow permission by a trial judge to appear as counsel pro hac vice in a single case should not thereafter hold himself or herself out as being admitted in California as that would be a misleading representation that the lawyer enjoys the same unlimited privilege of practicing law as an active member.

Third, proposed paragraph (b) would be a necessary predicate in the black letter of the rule for the important information provided in the proposed Comment to the rule concerning California’s

regulatory structure for MJP which differs substantially from that in other jurisdictions where regulation of MJP is found in the Rules of Professional Conduct. In California, MJP is “codified” in the Rules of Court. The Comment identifies the categories of authorized practice of law available to qualified lawyers who are not admitted in California and includes citations to the applicable Rules of Court.

Post-Public Comment Revisions

After consideration of comments received in response to the initial 90-day public comment period, the Commission made no changes to the proposed rule and voted to recommend that the Board adopt the proposed rule.

The Board adopted proposed rule 5.5 at its November 17, 2016 meeting.

Supreme Court Action (May 10, 2018)

The Supreme Court approved the rule as modified by the Court to be effective November 1, 2018. At the end of paragraph (a)(1), a comma was deleted and “; or” was added. In paragraph (a)(2), after the word “person,” the phrase “or entity” was deleted. Also, at the end of paragraph(a)(2), the phrase “in that jurisdiction” was added. In the Comment, citation style was revised to conform to the California Style Manual.

**Rule ~~1-300~~5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law
(Redline Comparison to the California Rule Operative Until October 31, 2018)**

- (Aa) A ~~member~~lawyer admitted to practice law in California shall not ~~aid any person or entity in the unauthorized practice of law.~~
- (B1) ~~A member shall not~~ practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.; or
- (2) knowingly* assist a person* in the unauthorized practice of law in that jurisdiction.
- (b) A lawyer who is not admitted to practice law in California shall not:
- (1) except as authorized by these rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; or
- (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in California.

Comment

Paragraph (b)(1) prohibits lawyers from practicing law in California unless otherwise entitled to practice law in this state by court rule or other law. (See, e.g., Bus. & Prof. Code, § 6125 et seq.; see also Cal. Rules of Court, rules 9.40 [counsel pro hac vice], 9.41 [appearances by military counsel], 9.42 [certified law students], 9.43 [out-of-state attorney arbitration counsel program], 9.44 [registered foreign legal consultant], 9.45 [registered legal services attorneys], 9.46 [registered in-house counsel], 9.47 [attorneys practicing temporarily in California as part of litigation], 9.48 [non-litigating attorneys temporarily in California to provide legal services].)