



## Interstate Practice of Law

Things are a little more complicated for lawyers than they used to be—especially for lawyers with clients who operate in more than one state.

Today, more than ever before, lawyers and law firms are required to have an occasional presence in several states in order to serve their clients. This often can result in lawyers having to operate in states in which they are not licensed to practice. Reacting to several reported decisions that denied fees to lawyers who assisted their clients in jurisdictions in which they were not admitted,<sup>1</sup> the drafters of the Model Rules of Professional Conduct in 2002 added some new provisions to “old” ER 5.5 (Unauthorized Practice of Law)<sup>2</sup> in an attempt to inject some common sense and fairness into the situation. Most of the states have adopted these revisions or something similar to them, but you should check before you venture into other jurisdictions.

The opposite applies, too. Remember that ERs 5.5(a) and 8.4 (Misconduct), at subsection (a), prohibit a lawyer from assisting another in violating the Arizona Rules of Professional Conduct, so you need to make sure that an out-of-state lawyer involved in your case has complied with “our” rules.

So, what are the rules? First, the old rule that a lawyer not admitted to practice in Arizona can’t establish an office or have any other systematic and continuous presence in Arizona for the practice of law still applies. That’s ER 5.5(b).

Second (and this is a “new” part of the rule), a lawyer who is admitted to and who is in good standing in another U.S. jurisdiction may provide legal services on a temporary basis in Arizona if one of four “safe harbors” applies. These are:

1. The services are undertaken with an Arizona lawyer who actually (actively) participates in the matter.
2. The services are in or reasonably related to a proceeding before a tribunal, and the lawyer, or the person that lawyer is assisting, is or expects to be authorized to practice in the proceedings. This subpart contemplates being admitted *pro hac vice* where required by a local rule of court.<sup>3</sup> Described as “capacious” by one authority,<sup>4</sup> this part of the rule essentially allows any lawyer to practice anywhere temporarily, subject to local rules of practice, and wouldn’t require *pro hac vice* admission to simply take depositions, interview witnesses, attend meetings and the like.
3. The services are in or reasonably related to a pending or potential arbitration, mediation or other alternative dispute resolution proceeding in Arizona or elsewhere and are reasonably related to the lawyer’s practice in a state where he is admitted. This is the ADR exception, allowing greater latitude for out-of-state lawyers to participate in arbitrations and mediations without getting further authority.
4. The services are other than as described in (2) or (3) above, and arise out of or are reasonably related to the lawyer’s practice in a jurisdiction where he is admitted. This is the “transactional law” exception, allowing out-of-state lawyers to participate in non-litigation matters without further accreditation.

The Comments to Arizona’s ER 5.5 are not very enlightening concerning these “safe harbor” provisions, but the Comments to the Model Rule are extensive.<sup>5</sup> Why Arizona did not adopt them is not explained. In any event, the Model Rule discusses the term “reasonably related” in connection with the lawyer’s practice in a jurisdiction where he is admitted as having no bright-line definition, but contemplates: (1) a previous representation of the client by the lawyer, (2) a significant connection of the matter with another jurisdiction and (3) the involvement of another jurisdiction’s law. See Comment [14] to the Model Rules.

The new provisions of ER 5.5, which has been in effect in Arizona since 2003, have opened the door to a wide variety of activities by out-of-state lawyers that previously would have been prohibited here as the unauthorized practice of law. As a practical matter, lawyers licensed in other states need only qualify as *pro hac vice* in Arizona where required by local court rule, and make sure they don’t establish what might be defined as an office here and hold out to the public that they are licensed in Arizona.<sup>6</sup>

Ethics Opinions and the Rules of Professional Conduct are available at [www.azbar.org/Ethics](http://www.azbar.org/Ethics)



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### endnotes

1. See *Birbrower, Montalbano, Condon & Frank, PC v. Superior Court*, 949 P.2d 1 (Cal. 1998) (New York firm representing a California client in California arranging for arbitration and negotiating a settlement held to be engaging in the unauthorized practice of law in California and denied recovery of all fees).
2. Rule 42, ARIZ.R.S.CT.
3. See, e.g., L.R.Civ. 83.1, U.S. District Court, District of Arizona. The Arizona Supreme Court has simply taken the position that its rules shall not affect the ability of lawyers licensed in other jurisdictions to engage in conduct that is permitted under ER 5.5. See Rule 31(d)27, ARIZ.R.S.CT.
4. GEOFFREY C. HAZARD & W. WILLIAM HODES, *THE LAW OF LAWYERING* § 46.9 (3d ed., 2010 Supp.).
5. Type “Model Rules of Professional Conduct” into Google and follow the links.