

Bibliography of Ethics Rules and Opinions Governing Remote Practice of Law



SEDONA ETHICS PANEL- May 18, 2022; BIBLIOGRAPHY OF REFERENCES ON ETHICS RULES AND OPINIONS THAT GOVERN THE REMOTE PRACTICE OF LAW

I. REMOTE PRACTICE

ABA Model Rule 5.5 Unauthorized Practice of Law: Multijurisdictional Practice of Law:

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_5_unauthorized_practice_of_law_multijurisdictional_practice_of_law/

American Bar Association, Standing Committee on Ethics and Professional Responsibility:
Formal Opinion 495- Dated December 16, 2020. Lawyers Working Remotely

https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba-formal-opinion-495.pdf

American Bar Association, Standing Committee on Ethics and Professional Responsibility:
Formal Opinion 498- Dated March 10, 2021. Virtual Practice

https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba-formal-opinion-498.pdf

Article: Update on The “Remote Work” Problem: Where Can I Safely Sit While Practicing From My Home State? February 6, 2022 (Compendium of jurisdictional updates)

<https://professionalresponsibility.fkks.com/post/102h9vx/update-on-the-remote-work-problem-where-can-i-sit-while-practicing-fro>

Article: The Ethics of Working Remotely, Whittney Dunn

<https://www.thebarplan.com/work-remote-ethics/>

CALIFORNIA: California Proposed Formal Opinion Interim Number 20-0004;

<https://www.calbar.ca.gov/portals/0/documents/publiccomment/2022/20-004-Ethical-Obligation-when-Working-Remotely.pdf>

Article: California Legal Ethics. Remote Practice: in California, the Big Question Remains Unanswered by David Cameron Carr

<https://ethicslawyer.files.wordpress.com/2022/03/multicolored-united-states-map.png>

California Rules of Professional Conduct 5.5 (b);

[https://www.calbar.ca.gov/Portals/0/documents/rules/Rule 5.5-Exec Summary-Redline.pdf](https://www.calbar.ca.gov/Portals/0/documents/rules/Rule%205.5-Exec%20Summary-Redline.pdf)

“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.”

BAR ASSOCIATION OF SAN FRANCISCO- Legal Ethics Opinion 2021. [August 2021]
<https://www.sfbar.org/wp-content/uploads/2021/08/BASF-Ethics-Opinion-re-UPLMJP-8.2.21-Final-002.pdf>

THE STATE BAR OF CALIFORNIA STANDING COMMITTEE ON PROFESSIONAL RESPONSIBILITY AND CONDUCT FORMAL OPINION INTERIM NO. 20-0004
<https://www.calbar.ca.gov/Portals/0/documents/publicComment/2021/20-004-Ethical-Obligation-when-Working-Remotely.pdf>

FLORIDA: Supreme Court of Florida. No. SC20-1220. THE FLORIDA BAR RE: ADVISORY OPINION- OUT-OF-STATE ATTORNEY WORKING REMOTELY FROM FLORIDA HOME. May 20, 2021
<https://www.floridasupremecourt.org/content/download/743446/opinion/sc20-1220.pdf>

Article: Court Holds it's not UPL (Unlicensed Practice of Law) for an Out-of-State Licensed Attorney to Work Remotely From his Florida Home. May 21, 2021.
<https://www.floridabar.org/the-florida-bar-news/court-holds-its-not-upl-for-an-out-of-state-licensed-attorney-to-work-remotely-from-his-florida-home/>

D.C.: Ethics Opinion 24-20 (2020) on Telecommuting: A lawyer may telecommute from their personal residences in D.C. during the pandemic and meet the "incidental and temporary practice" exception of D.C.'s rules if the lawyer: (1) is practicing from home due to the COVID-19 pandemic; (2) maintains a law office in a jurisdiction where the attorney is admitted to practice; (3) avoids using a District of Columbia address in any business document or otherwise holding out as authorized to practice law in the District of Columbia, and (4) does not regularly conduct in-person meetings with clients or third parties in the District of Columbia.
<https://www.dccourts.gov/sites/default/files/2020-03/CUPL-Opinion-24-20.pdf> Maine Ethics

Maine: Ethics Opinion 189 (2005). Lawyer not licensed in Maine who has an office in Maine with a primary address and telephone number in Maine, describes the firm on its website as being "a Maine based boutique litigation law firm," and states he is a member of the state bar associations in Maine and the state in which the lawyer is licensed, is engaging in the unlicensed practice of law in Maine. Lawyer who is partner in Maine law firm who limits his practice to international and national regulatory work, whose letterhead states that he is admitted only in the jurisdiction where admitted, also is engaged in the practice of law in Maine without being admitted in Maine, but the committee lacks sufficient information to determine if the lawyer's practice limitations are sufficient to meet the federal practice exemption because the lawyer himself states that he will employ other lawyers "to complement his services" if clients need legal advice of other jurisdiction's laws.

https://www.mebareverseers.org/attorney_services/opinion.html?id=87369

Utah: Ethics Opinion 19-03 (2019). A lawyer who is licensed in a jurisdiction outside of Utah may reside in Utah and practice law from the jurisdiction in which the lawyer is actually licensed, if the lawyer does not solicit Utah clients or establish a public office in Utah.
<https://www.utahbar.org/wp-content/uploads/2019/05/19-03.pdf>

Association of Professional Responsibility Lawyers (APRL) Draft Proposed Amendment to 5.5
<https://aprl.net/wp-content/uploads/2022/04/Letter-regarding-our-proposal-to-ABA-President.pdf>

II. CORE ETHICAL DUTIES OF LAWYERS THAT EXIST AND MUST BE EVALUATED IN ANY REMOTE PRACTICE SITUATION

DUTY OF COMPETENCE & DUTY OF TECHNOLOGICAL COMPETENCE

ABA Model Rule 1.1

Model Rule 1.1.(8) addresses the duty of competence required by an attorney and includes the duty of technological competence: “To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology*, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.” (adopted by 39 states)

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/comment_on_rule_1_1/

<https://judgegijones.com/2021/03/technology-competence-a-duty/>

Technological competence in protecting client info when building AI

ABA October 2, 2020 Ethical Obligations to Protect Client Data when Building Artificial Intelligence Tools: Wigmore Meets AI by Daniel Linna Jr & Wendy J. Muchman,
https://www.americanbar.org/groups/professional_responsibility/publications/professional_lawyer/27/1/ethical-obligations-protect-client-data-when-building-artificial-intelligence-tools-wigmore-meets-ai/

<https://www.okbar.org/barjournal/dec2018/obj8932ahloy/>

DUTY TO PROTECT CLIENT INFORMATION AND CLIENT PROPERTY

ABA Model Rule 1.15 Model Rule 1.15 addresses the Protection of Client Property- A lawyer has an obligation to protect client property and keep it safe.

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_15_safekeeping_property/

DUTY TO KEEP A CLIENT INFORMED OF STATUS OF A MATTER

ABA Model Rule 1.4

Model Rule 1.4 requires a lawyer to keep a client informed about the status of a matter and to explain a matter to the extent reasonable necessary to permit the client to make informed

decisions regarding the representation. (To the extent there are any important points to be made to the client about the use of a remote work environment and any effects on the litigation, that must be disclosed and discussed.)

DUTY TO KEEP CLIENT INFORMATION AND COMMUNICATIONS CONFIDENTIAL

ABA Model Rule 1.6

Model Rule 1.6 addresses the duty of a lawyer to keep client information and communications confidential and the duty of make reasonable efforts to prevent inadvertent or unauthorized disclosure. Lawyers shall not reveal information relating to the representation of a client (absent a specific exception, informed consent, or implied authorization)

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information/

ABA Ethics Opinion 483 states that the lawyers duty to protect client information does not change based upon whether the information is in paper or electronic form.

https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_formal_op_483.pdf

ABA Formal Opinion 477R summarizes, “[a] lawyer generally may transmit information relating to the representation of a client over the Internet without violating the Model Rules of Professional Conduct where the lawyer has undertaken reasonable efforts to prevent inadvertent or unauthorized access.”

<https://www.americanbar.org/news/abanews/publications/youraba/2017/june-2017/aba-formal-opinion-477r--securing-communication-of-protected-cli/>

New York State Bar Association, Committee on Professional Ethics. Opinion 1240 (04/08/2022) Requiring a lawyer to take reasonable care to protect clients confidential information on an electronic device the attorney is carrying to prevent the unauthorized access to such names which could be confidential.

https://urldefense.proofpoint.com/v2/url?u=https-3A_nysba.org_app_uploads_2022_04_Opn-2D1240-2Dwith-2Dletterhead.pdf&d=DwQF_g&c=jf_iaSHvJObTbx-siA1ZOg&r=cj6ya2fA-u8prMQSXhTHCd1ZicunXCHjqvNV0V_BpVU&m=RD5wIH657EzYUQQufrOk5wHbSPCvf06qRq-ObiUTHI8rzh88Fb4h4cml-nfwP8XU&s=LJ-ZGVGpnDI2_V9zEboQJcJFyOF4NVir7nEqrRgtEbU&e=

DUTY OF CANDOR AND DUTY OF FAIRNESS

ABA Model Rule 3.3

Model Rule 3.3 establishes the duty of candor required by a lawyer (knowledge of what is going on in terms of news ways of communication, new technology, new tools).

ABA Model Rule 3.4

Model Rule 3.4 addresses the fairness owed by a lawyer to opposing counsel.

DUTY OF SUPERVISION

ABA Model Rule 5.1 and 5.3 address the duty of supervision owed by lawyers to their clients on matters for which they are engaged. These rules govern the supervision over remote colleagues, as well as any vendor, contract attorney or other consultant working on a matter in this new work environment.

Lawyers with managerial authority have ethical obligations to establish policies and procedures to ensure compliance with the ethics rules, and supervisory attorneys have a duty to make reasonable efforts to ensure that subordinate lawyers and nonlawyer assistants comply with the applicable Rules of Professional Conduct.

In the case of lawyers supervising remote document reviewers, the supervising attorney must vet the reviewers for any conflicts of interest and ascertain if the remote setting raises any concerns for *inter alia*, conflict, security, technological competence, confidentiality.