

## **Alabama Rules of Professional Conduct**

### **Law Firms and Associations**

#### **Rule 5.5.**

##### **Unauthorized 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) Subject to the requirements of Rule VII, Rules Governing Admission to the Alabama State Bar (Admission of Foreign Attorneys Pro Hac Vice), a lawyer admitted in another United States jurisdiction but not in the State of Alabama (and not disbarred or suspended from practice in that or any jurisdiction) does not engage in the unauthorized practice of law when the lawyer represents a client on a temporary or incidental basis (as defined below) in the State of Alabama. Services for a client are within the provisions of this subsection if the services:

(1) are performed on a temporary basis by a lawyer admitted and in good standing in another United States jurisdiction, including transactional, counseling, or other nonlitigation services that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice;

(2) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding held or to be held in this or in another jurisdiction; or

(3) are performed by an attorney admitted as an authorized house counsel under Rule IX of the Rules Governing Admission to the Alabama State Bar and who is performing only those services defined in that rule.

(c) A lawyer admitted to practice in another jurisdiction but not in the State of Alabama does not engage in the unauthorized practice of law in the State of Alabama when the lawyer renders services in the State of Alabama pursuant to other authority granted by federal law or under the law or a court rule of the State of Alabama.

(d) Except as authorized by these Rules or other law, a lawyer who is not admitted to practice in the State of Alabama shall not (1) establish an office or other permanent presence in this jurisdiction for the practice of law, or (2) represent or hold out to the public that the lawyer is admitted to practice law in Alabama.

(e) Practicing law other than in compliance with this rule or Rule VII or Rule VIII of the Rules Governing Admission to the Alabama State Bar, or other rule expressly permitting the practice of law, such as the Rule Governing Legal Internship by Law Students, shall constitute the unauthorized practice of law and shall subject the lawyer to all of the penalties, both civil and criminal, as provided by law.

[Amended eff. 9-19-2006.]

### **Comment**

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. Paragraph (b) 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 their work. See Rule 5.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law, for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

### **Comparison with Former Alabama Code of Professional Responsibility**

Paragraph (a) is substantially identical to DR 3-101(B),

Paragraph (b) is substantially identical to DR 3-101(A).

### **Official Comment to Amendment Effective September 19, 2006**

The provisions of Rule 5.5.B.1 and 2 are intended to permit a lawyer admitted and in good standing in another jurisdiction to perform services incidental to matters that form part of his “home” practice, such as taking depositions related to a case pending elsewhere, interviewing witnesses, recording deeds on Alabama property, preparing estate or trust documents that include Alabama property, obtaining document signatures or affidavits effecting transactions elsewhere. Such services are to be distinguished from systematic or continuous representation or carrying out transactions or representing clients wholly within this State.

The American Bar Association (“ABA”) has published commentary on Rule 5.5 of the Model Rules of Professional Conduct. The foregoing Rule 5.5 contains some provisions similar to provisions in the ABA model rule. To the extent the provisions of Rule 5.5.B are similar to the ABA model rule, the ABA's commentary to its model rule may be helpful in interpreting Rule 5.5.B.

**Note from the reporter of decisions:** The order amending Rule 5.5, effective September 19, 2006, and adopting the official comment to that amendment is published in that volume of *Alabama Reporter* that contains Alabama cases from 939 So.2d.