

Md. R. Att'y 19-305.5

Rule 19-305.5 - Unauthorized Practice of Law; Multi-Jurisdictional Practice of Law (5.5)

- (a) An attorney shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- (b) An attorney who is not admitted to practice in this jurisdiction shall not:
- (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
 - (2) hold out to the public or otherwise represent that the attorney is admitted to practice law in this jurisdiction.
- (c) An attorney admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:
- (1) are undertaken in association with an attorney who is admitted to practice in this jurisdiction and who actively participates in the matter;
 - (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the attorney, or a person the attorney is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
 - (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted to practice and are not services for which the forum requires pro hac vice admission; or
 - (4) are not within subsections (c)(2) or (c)(3) of this Rule and arise out of or are reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted to practice.
- (d) An attorney admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:
- (1) are provided to the attorney's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or
 - (2) are services that the attorney is authorized to provide by federal law or other law of this jurisdiction.
- (e)
- (1) In this section, "foreign attorney means an attorney who (A) is not admitted to practice law in any United States jurisdiction, (B) is a member in good standing of a recognized

legal profession in a country other than the United States and, as such, is authorized to practice law in that country, (C) is subject to effective regulation and discipline by a duly constituted professional body or a public authority of that country, and (D) has not been disbarred or suspended from the practice of law in any jurisdiction of the United States.

(2) A foreign attorney may not establish an office or other systematic and continuous presence in this State for the practice of law, or hold out to the public or otherwise represent that the attorney is admitted to practice law in this State. Any violation of this provision or any material misrepresentation regarding the requirements in subsection (e) (1) of this Rule by the foreign attorney will subject the foreign attorney to liability for the unauthorized practice of law.

(3) A foreign attorney, with respect to any matter, may (A) act as a consultant to a Maryland attorney on the law and practice in a country in which the foreign attorney is admitted to practice, including principles of international law recognized and enforced in that country and (B) in association with a Maryland attorney who actively participates in the matter, participate in discussions with a client of the Maryland attorney or with other persons involved with the matter, provided that the Maryland attorney shall remain fully responsible to the client for all advice and other conduct by the foreign attorney with respect to the matter.

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Adopted June 6, 2016, eff. July 1, 2016. Amended Oct. 10, 2018, eff. Jan. 1, 2019.

HISTORICAL NOTES

2018 Orders

The October 10, 2018 order added a new section (e) pertaining to foreign attorneys and a new Comment [22].

COMMENT

[1] An attorney may practice law only in a jurisdiction in which the attorney is authorized to practice. An attorney may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Section (a) of this Rule applies to unauthorized practice of law by an attorney, whether through the attorney's direct action or by the attorney's assisting another person.

[2] 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. This Rule does not prohibit an attorney from employing the services of paraprofessionals and delegating functions to them, so long as the attorney supervises the delegated work and retains responsibility for their work. See Rule 19-305.3 (5.3).

[3] An attorney may provide professional advice and instruction to non-attorneys whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and individuals employed in government agencies. Attorneys also may assist independent non-attorneys, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, an attorney may counsel non-attorneys who wish to proceed self-represented.

[4] Other than as authorized by law or this Rule, an attorney who is not admitted to practice generally in this jurisdiction violates section (b) of this Rule if the attorney establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the attorney is not physically present here. Such an attorney must not hold out to the public or otherwise represent that the attorney is admitted to practice law in this jurisdiction. See also Rules 19-307.1(a) (7.1) and 19-307.5 (b) (7.5).

[5] There are occasions in which an attorney admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Section (c) of this Rule identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized.

[6] There is no single test to determine whether an attorney's services are provided on a "temporary basis in this jurisdiction, and may therefore be permissible under section (c) of this Rule. Services may be "temporary even though the attorney provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the attorney is representing a client in a single lengthy negotiation or litigation.

[7] Sections (c) and (d) of this Rule apply to attorneys who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted in section (c) of this Rule contemplates that the attorney is authorized to practice in the jurisdiction in which the attorney is admitted and excludes an attorney who while technically admitted is not authorized to practice, because, for example, the attorney is on inactive status.

[8] Subsection (c)(1) of this Rule recognizes that the interests of clients and the public are protected if an attorney admitted only in another jurisdiction associates with an attorney licensed to practice in this jurisdiction. For this subsection to apply, however, the attorney admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Attorneys not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under subsection (c)(2) of this Rule, an attorney does not violate this Rule when the attorney appears before a tribunal or agency pursuant to such authority. An attorney who is not admitted to practice in this jurisdiction must obtain admission pro hac vice before appearing before a tribunal or administrative agency, as provided by Rule 19-214 of the Rules Governing Admission to the Bar of Maryland. See also Md. Code, Business Occupations and Professions Article, § 10-215.

[10] Subsection (c)(2) of this Rule also provides that an attorney rendering services in this jurisdiction on a temporary basis does not violate this Rule when the attorney engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the attorney is authorized to practice law or in which the attorney reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, an attorney admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the attorney is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] *When an attorney has been or reasonably expects to be admitted to appear before a court or administrative agency, subsection (c)(2) of this Rule also permits conduct by attorneys who are associated with that attorney in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate attorneys may conduct research, review documents, and attend meetings with witnesses in support of the attorney responsible for the litigation.*

[12] *Subsection (c)(3) of this Rule permits an attorney admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted to practice. The attorney, however, must obtain permission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require. See Rule 19-214 of the Rules Governing Admission to the Bar of Maryland regarding admission to appear in arbitrations.*

[13] *Subsection (c)(4) of this Rule permits an attorney admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted but are not within subsections (c)(2) or (c)(3) of this Rule. These services include both legal services and services that non-attorneys may perform but that are considered the practice of law when performed by attorneys.*

[14] *Subsections (c)(3) and (c)(4) of this Rule require that the services arise out of or be reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted. A variety of factors evidence such a relationship. The attorney's client may have been previously represented by the attorney, or may be resident in or have substantial contacts with the jurisdiction in which the attorney is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the attorney's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their attorney in assessing the relative merits of each. In addition, the services may draw on the attorney's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.*

[15] *Section (d) of this Rule identifies two circumstances in which an attorney who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis.*

[16] *Subsection (d)(1) of this Rule applies to an attorney who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This subsection does not authorize the provision of personal legal services to the employer's officers or employees. The subsection applies to in-house corporate attorneys, government attorneys and others who are employed to render legal services to the employer. The attorney's ability to represent the employer outside the jurisdiction in which the attorney is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the attorney's qualifications and the quality of the attorney's work.*

[17] *If an employed attorney establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the attorney is governed by Md. Code, Business Occupations and Professions Article, § 1-206(d). In general, the employed attorney is subject to disciplinary proceedings under the Maryland Rules and must comply with Md. Code, Business Occupations and Professions Article, § 10-215 (and Rule 19-214) for authorization to appear before a tribunal. See also Rule 19-215 (as to legal services attorneys).*

[18] *Subsection (d)(2) of this Rule recognizes that an attorney may provide legal services in a jurisdiction in which the attorney is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.*

[19] *An attorney who practices law in this jurisdiction pursuant to section (c) or (d) of this Rule or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 19-308.5(a) (8.5) and Md. Rules 19-701 and 19-711.*

[20] *In some circumstances, an attorney who practices law in this jurisdiction pursuant to section (c) or (d) of this Rule may have to inform the client that the attorney is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 19-301.4(b) (1.4).*

[21] *Sections (c) and (d) of this Rule do not authorize communications advertising legal services to prospective clients in this jurisdiction by attorneys who are admitted to practice in other jurisdictions. Rules 19-307.1 (7.1) to 19-307.5 (7.5) govern whether and how attorneys may communicate the availability of their services to prospective clients in this jurisdiction.*

[22] *Section (e) is not intended to permit a foreign attorney to be admitted pro hac vice in any proceeding, but it does not preclude the foreign attorney (1) from being present with a Maryland attorney at a judicial, administrative, or ADR proceeding to provide consultative services to the Maryland attorney during the proceeding, or (2) subject to Rule 5-702, from testifying as an expert witness.*

Model Rules Comparison: *Rule 19-305.5 (5.5) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, except that section (e) is new.*
