



Practicing From a Remote Jurisdiction

BY ELIZABETH J. HYATT

Many lawyers have taken advantage of the ubiquitous technology allowing for the remote practice of law. But working remotely is not without perils. Lawyers must be aware of regulatory requirements and ethical and risk management issues arising from the remote practice of law. For the purposes of this article, remote practice refers to practicing while physically located in a jurisdiction other than the jurisdiction in which the lawyer is licensed—that is, a remote jurisdiction.

To assist Colorado practitioners in this area, this article discusses the relevant ethical rules related to remote work and addresses some important risk management considerations for anyone considering remote practice.

Is a Colorado-Licensed Lawyer Permitted to Practice Law While Located in Another Jurisdiction?

Whether a Colorado lawyer may practice law while located in another jurisdiction depends on the remote jurisdiction's regulations.

The Colorado Rules of Professional Conduct (Rules) prohibit a Colorado lawyer from working remotely in another jurisdiction where doing so violates the remote jurisdiction's regulations.¹ Were a Colorado lawyer to practice from a remote jurisdiction where such remote practice is prohibited, that Colorado lawyer would be, in addition to violating the remote jurisdiction's regulations, subject to discipline *in Colorado*.²

Accordingly, a lawyer must assess whether the regulations of the remote jurisdiction

permit the lawyer's practice from the remote jurisdiction.

Is an Out-of-State Lawyer Permitted to Practice Law While Located in Colorado?

Under certain circumstances, a lawyer licensed in a remote jurisdiction may practice law while located in Colorado.

Rule 5.5(a)(1) prohibits "the practice of law in this jurisdiction without a license to practice law issued by the Colorado Supreme Court unless specifically authorized by C.R.C.P. 204, *et seq.* or federal or tribal law."³

Any out-of-state lawyer wishing to appear in Colorado courts or administrative tribunals must obtain pro hac vice admission.⁴ A lawyer

licensed and in good standing in a remote jurisdiction also may practice law in Colorado if the lawyer “has not established domicile in Colorado” and the lawyer “has not established a place for the regular practice of law in Colorado from which the attorney holds himself or herself out to the public as practicing Colorado law or solicits or accepts Colorado clients.”⁵

Regarding out-of-state lawyers who live in Colorado, the Office of Attorney Regulation Counsel (OARC) “generally does not interpret the Supreme Court’s rules governing lawyers to necessarily require Colorado licensure if the resident lawyers are engaged in a state law practice based on the attorney’s jurisdiction of licensure when that practice does not require appearances in Colorado courts or application of Colorado law.”⁶ And in February 2024, the Colorado Supreme Court amended Comment [1] to Rule 5.5 to add the following:

Lawyers who are physically present in Colorado and provide legal services under the authority of another jurisdiction do not violate Rule 5.5(a)(1), provided such lawyers do not solicit or accept clients in Colorado for services to be performed in Colorado and do not hold themselves out, directly or impliedly, as authorized to practice law in Colorado.⁷

Lawyers not admitted to practice in Colorado need to be aware that Rule 8.5(a) subjects them discipline if they provide or offer to provide “any legal services” in Colorado.⁸ And out-of-state lawyers practicing under CRCP 205.1 (Temporary Practice by Out-of-State Attorney—Conditions of Practice) are subject to the Colorado Rules of Professional Conduct, the Rules Governing Lawyer Discipline and Disability Proceedings, and the Revocation of License rule.⁹

Furthermore, the OARC cautions that if a lawyer living in Colorado is working for a law firm with a Colorado office and is not exclusively practicing in federal or tribal law, the lawyer probably should be licensed to practice in Colorado.¹⁰ And though a lawyer licensed in another jurisdiction may be authorized to provide legal services in Colorado while the lawyer’s application for admission is pending pursuant to CRCP 205.6 (Practice Pending Admission),

the lawyer must be cognizant of the multiple requirements set forth in that rule and that the permission to engage in such practice lasts no more than 365 days, regardless of whether the application for admission remains pending.¹¹


Risk Management Considerations for the Remote Practice of Law

Professional liability insurance policies are written, in part, based on the geographic location of the firm, and a law firm’s insurer may have guidelines stipulating that a majority of the firm’s clients be located in the state in which the firm is located. Law firms should consult their insurers to identify any coverage issues resulting from out-of-state lawyers practicing from their Colorado offices. Lawyers should also review their professional liability policies’ coverage for data breaches and cyberattacks, and financial losses arising from technology-related mistakes.

Ethical issues and professional liability exposure often go hand in hand.¹² Lawyers practicing remotely should be mindful of heightened ethical and liability risks associated

with the virtual practice of law, an almost universal component of remote work. The use of technology enabling remote work implicates ethical duties and risk-management concerns regarding client confidentiality,¹³ competency,¹⁴ and the supervision of subordinate lawyers and staff,¹⁵ to name a few. CBA Formal Ethics Opinion 149, *Ethical Obligations for Lawyers Engaged in Virtual Practice*; the American Bar Association Standing Committee on Ethics and Professional Responsibility, Formal Opinion 498, *Virtual Practice*; and Hauptman and Beckwith, “The Duty of Competence in the New Normal,” 50 *Colo. Law.* 40, 41–45 (July 2021),¹⁶ are valuable resources for identifying numerous practical measures any lawyer practicing remotely should employ.

Conclusion

If a lawyer is considering or already engaged in a practice from a remote jurisdiction, the lawyer needs to address the unique or heightened legal, ethical, and risk management issues associated with the remote practice of law. 

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NOTES

1. Colo. RPC 5.5(a)(2) (a Colorado lawyer may not practice law in a jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction).
2. Colo. RPC 8.4(a-1) (violation of Rules constitutes professional misconduct); Rule 8.5 (Colorado lawyer is subject to discipline regardless of where the misconduct occurs).
3. Colo. RPC 5.5(a)(1).
4. CRCP 205.1(2).
5. CRCP 205.1(1)–(2), Temporary Practice by Out-of-State Attorney—Conditions of Practice.
6. “Can Out-of-State Attorneys Reside in Colorado?” OARC Newsletter (Nov. 2020), <https://www.coloradolegalregulation.com/wp-content/uploads/Newsletters/November2020/Index.htm>.
7. Colo. RPC, cmt. [1], effective February 8, 2024.
8. Colo. RPC 8.5(a).
9. CRCP 205.1(3).
10. “Can Out-of-State Attorneys Reside in Colorado?,” *supra* note 6.
11. CRCP 205.6.
12. See Colo. RPC Preamble, [20] (though not a basis of liability in and of themselves, the Rules “do establish standards of conduct by lawyers”).
13. See Colo. RPC 1.6 (confidentiality of information).
14. See Colo. RPC 1.1 (duty of competence).
15. See Colo. RPC 5.1 and 5.3 (duties of supervision of subordinate lawyers and nonlawyers).
16. <https://cl.cobar.org/features/the-duty-of-competence-in-the-new-normal>.