

Living in Utah, Working for Out-of-State Clients

by LaShel Shaw and Keith A. Call

I once saw a bumper sticker on a car with a Montana license plate that said, “Montana is full. I hear South Dakota is really nice, though.” That made me laugh out loud and echoed much of how we feel about Utah. However, every indication is that Utah will continue to grow. Some small percentage of Utah’s population growth is likely coming from out-of-state lawyers moving to Utah.

With the COVID-19 crisis, many professionals are rethinking the advantages of crowded cities. The allure of cities can’t be denied, with their restaurants, culture, variety of experiences, and proximity to major airports. But population centers are a tough gig in the coronavirus age: social distancing is an inherent challenge, and the increasing viability of remote work allows professionals to smoothly transition to suburbs, small towns, and rural locations.

Lisa Pansini, *Attorneys Moving Away from Big Cities During Covid*, ROCKET MATTER’S LEGAL PRODUCTIVITY (Aug. 5, 2020), <https://www.rocketmatter.com/mobile-lawyers/attorneys-moving-away-from-big-cities-during-covid/>.

With a relatively low population, lots of open space, and easy-to-access recreational opportunities, Utah has a lot to offer to the urban refugee lawyer. In this article, we explore the Utah ethical rules applicable to lawyers living in Utah who do not have a Utah bar license.

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Rule 5.5

The unauthorized practice of law in Utah is governed by Utah Rule of Professional Conduct 5.5. Under the Utah rule (which is slightly different than the ABA Model Rule), “[a] lawyer who is not admitted to practice in this jurisdiction shall not . . . establish an office or other systematic and continuous presence in this jurisdiction for the practice of law” or “hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.” Utah R. Pro. Conduct 5.5(b). Some limited exceptions are enumerated for licensed attorneys in good standing in other U.S. jurisdictions to practice law in Utah on a limited temporary basis. *Id.* 5.5(c).

Applicable Ethics Opinions

In 2019, prior to the pandemic, the Utah State Bar Ethics Advisory Opinion Committee considered whether Rule 5.5(b) would be violated if “an individual licensed as an active attorney in another state and in good standing in that state establishes a home in Utah and practices law for clients from the state where the attorney is licensed, neither soliciting Utah clients nor establishing a public office in Utah.” Utah Bar Ethics Advisory Opinion Comm., Op. No. 19-03 (2019) (hereinafter EAOC Opinion), ¶ 1. The EAOC recognized an argument that living in Utah while practicing law for out-of-state clients could be read to violate Rule 5.5(b). *Id.* ¶ 8. However, citing several constitutional concerns as well as other non-Utah legal authorities, the EAOC concluded that Rule 5.5(b) permits an out-of-state lawyer to establish a private

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residence in Utah and to practice law from that residence for clients from the state where the attorney is licensed. *Id.* ¶¶ 2, 18. The EAOC Opinion emphasized that the out-of-state lawyer may not establish a “public office” in Utah or solicit Utah business. *See id.* ¶¶ 1–2.

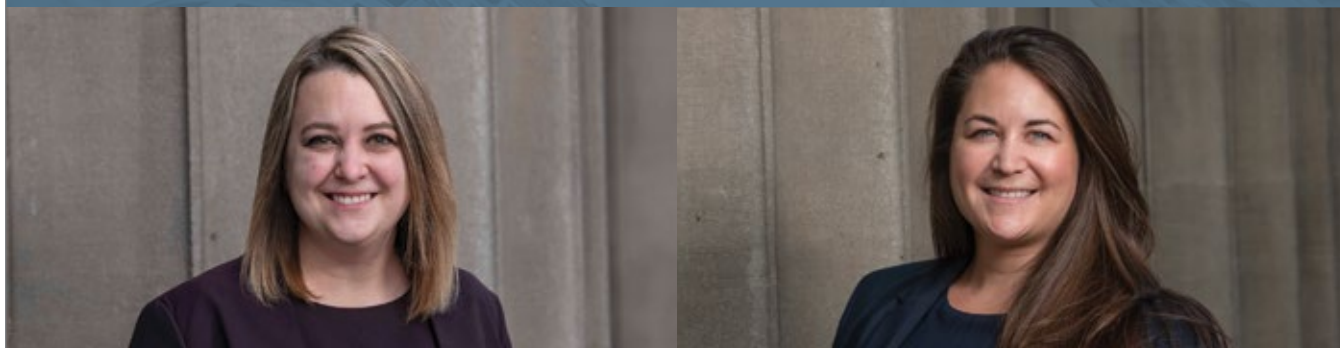
Subsequent ethics opinions from the American Bar Association (ABA) and other jurisdictions have reached similar conclusions, although most of them do not go quite as far as the EAOC Opinion. For instance, in Formal Opinion 495, the ABA concluded that “[l]awyers may ethically engage in practicing law as authorized by their licensing jurisdiction(s) while being physically present in a jurisdiction in which they are not admitted” so long as (1) the jurisdiction where they are physically present has not prohibited it; (2) “the lawyer’s website, letterhead, business cards, advertising, and the like clearly indicate the lawyer’s jurisdictional limitations, do not provide an address in the local jurisdiction, and do not offer to provide legal services in the local jurisdiction”; and (3) they do not actually provide legal services for matters subject to the local jurisdiction. ABA Standing Comm. on Ethics & Pro.

Responsibility, Formal Opinion 495 at p. 1–3 (2020). *See also* Penn. Bar Assoc. Comm. on Legal Ethics & Pro. Responsibility & Philadelphia Bar. Assoc. Pro. Guidance Comm., Joint Formal Op. 2021-100; The Florida Standing Comm. on the Unlicensed Practice of Law, FAO 2019-4 (2020); *In re Application of Jones*, 123 N.E.3d 877 (Ohio 2018) (DeWine, J., concurring); Maine Bar Pro. Ethics Comm., Op. 189 (2005).

Gray Areas and Words of Caution

We can conclude from the EAOC opinion that out-of-state lawyers may safely practice law for home-state clients if the lawyer stays at home in a private home office and does not establish a “public office.” But how far lawyers may stray from their private living rooms is unclear. May lawyers work from the local public library or corner coffee shop? May lawyers practice law from a private office suite in an office building, provided there is no public signage? May lawyers practice law for one day from inside their national law firm’s Utah office? How about a week, a month, or a year? At some point, many questions like these seem to raise technical distinctions without any substantive differences.

MEET OUR NEW ATTORNEYS



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Snow Christensen & Martineau is pleased to announce that associates **LaShel Shaw** and **Brenda E. Weinberg** have joined the firm. LaShel is an accomplished litigation attorney with expertise in both intellectual property and government defense. She previously worked in the Salt Lake County District Attorney’s Office as a civil litigator. Brenda is a trial attorney whose practice consists of appellate practice and commercial litigation. Before joining SC&M, she was a shareholder at Felix & Weinberg.

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The safest course for the time being, of course, is for the non-Utah lawyer to stay home. That is the best way to assure the protection of Utah's safe harbor rule. *See* Sup. Ct. R. Pro. Prac. 11-522(a) (precluding Office of Professional Conduct from prosecuting conduct that complies with an ethics advisory opinion that has not been withdrawn, but only if the conduct completely complies).

The EAOC Opinion also forbids lawyers who are not licensed in Utah from soliciting Utah business. The EAOC left the boundaries of that restriction undefined. Sending out a direct mailer to potential Utah clients in Utah would obviously be forbidden. But what about attending a Bar function, a lunch, or a Jazz game with people who may or may not become clients? What about telling friends at a child's Utah soccer game that you are a lawyer? The rules and opinions leave these and other similar questions unanswered.

Out-of-state lawyers should be extra careful with their internet websites, especially when they are associated with Utah law firms. In *Kelly v. Utah State Bar*, 2017 UT 6, 391 P.3d 210, an applicant for admission to the Utah Bar had previously been found to have engaged in the unauthorized practice of law after appearing on the website of a Utah law firm, even though the website included a disclaimer that the attorney was only licensed in Massachusetts and not licensed in Utah. *See Kelly*, 2017 UT 6, ¶¶ 6 n.9, 21 n.39.

Possible Amendments to Rule 5.5

The Utah Supreme Court is currently considering amendments to Rule 5.5(b) that would partially codify the EAOC Opinion. The proposed new rule would codify the EAOC's conclusion that lawyers physically located in Utah may provide legal services remotely to clients located in a jurisdiction where the lawyer is admitted, so long as the lawyer does not establish a "public-facing office." The proposed rule would continue to prohibit non-Utah lawyers from representing that they are admitted to practice law in Utah. Unfortunately, the proposed amendments do not define what is meant by a "public-facing office" or otherwise clarify the gray areas we identify above. *See* Draft Amendments to Utah R. Pro. Conduct 5.5(b) (Nov. 5, 2021), *available at* <https://www.utcourts.gov/utc/rules-comment/wp-content/uploads/sites/31/2021/11/RPC05.05.FOR-COMMENT.pdf>.

Conclusion

Bumper sticker jokes notwithstanding, if you are a lawyer who has recently moved to Utah, we welcome you. We hope this article helps you navigate the ins and outs of living in Utah while serving your home-state clients.

Every case is different. This article should not be construed to state enforceable legal standards or to provide guidance for any particular case. The views expressed in this article are solely those of the authors.