



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I am a lawyer admitted in a couple of Midwestern states, representing a client in a state where I am licensed that has a dispute with an opposing party in a state where I am not licensed. For various reasons, if the case cannot be settled and the facts develop as I expect, we will most likely file suit in that other state, at which time I'll get local counsel and get admitted *pro hac vice*. Until then, can I rely upon the temporary practice provisions of Model Rule 5.5 to attend a pre-litigation settlement meeting without local counsel, and to do some pre-suit investigation and witness interviews, either there or by zoom from a state where I am licensed?

A: Let's talk about Rule 5.5 in the context of litigation. The rule has undergone a lot of changes in recent years, a lot of which has been adopted in most states, including changes permitting certain types of temporary practice within a state although not licensed there. But there are still differences in both the rule and its interpretation between states, so it's important to always check the version in place where you're proposing to be active to make sure you're on solid ground. Rule 5.5(b)(1),(2) and (3) provide "temporary practice" authorization in a jurisdiction where adopted, relating to litigation. Rule 5.5(b)(2) applies here to authorize temporary practice where it is reasonably related to a "potential proceeding" before a tribunal where the lawyer reasonably expects to be authorized (e.g., admitted *pro hac vice*).

But, be careful. Physical presence is not required—a communication sent into a state from elsewhere can be construed as practice within that state. And not every aspect of a matter is accepted as sufficiently relating to a proceeding before a tribunal. For example, Illinois Advisory Op. 23-01 (Mar. 2023) opined that an out-of-state lawyer not licensed in Illinois could not send a demand letter into the state without local Illinois counsel notwithstanding the 5.5(b)(2) temporary practice authorization, because a demand letter seeking to settle a matter would not be preliminary work associated with a pending or potential proceeding in which the out-of-state lawyer would be admitted *pro hac vice*.

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About Dear Ethics Lawyer

The twice-monthly "Dear Ethics Lawyer" column is part of a training regimen of the Legal Ethics Project, authored by [Mark Hinderks](#), former managing partner and counsel to an AmLaw 132 firm; Fellow, American College of Trial Lawyers; and speaker/author on professional responsibility for more than 25 years. Mark leads Stinson LLP's [Legal Ethics & Professional Responsibility](#) practice, offering advice and "second opinions" to lawyers and law firms, consulting and testifying expert service, training, mediation/arbitration and representation in malpractice litigation. The submission of questions for future columns is welcome: please send to mark.hinderks@stinson.com.

Discussion presented here is based on the ABA Model Rules of Professional Conduct, but the Model Rules are adopted in different and amended versions, and interpreted in different ways in various places. Always check the rules and authorities applicable in your relevant jurisdiction – the result may be completely different.