



OPINION 2021-1

[Issue date: August 2021]

ISSUE:

Is a lawyer, who is licensed in one or more jurisdictions but practices law remotely from another jurisdiction where the lawyer resides and is not licensed, engaged in the unauthorized practice of law?

DIGEST:

A lawyer who is not licensed in California, and who does not advertise or otherwise hold himself or herself out as a licensed California lawyer, does not establish an office or other systematic or continuous presence for the practice of law in California, and does not represent a California person or entity, but is merely physically present in California while using modern technology to remotely practice law in compliance with the rules of the jurisdiction where the lawyer is licensed, should not be held in violation of California's Unauthorized Practice of Law ("UPL") rule and laws, specifically California Rules of Professional Conduct ("CRPC") Rule 5.5, or the State Bar Act, Business & Professions ("B&P") Code §§6125-6126. If such a lawyer does represent a California person or entity, whether the lawyer violates the UPL rule and laws will depend on the nature of the representation, whether the representation complies with the regulations of the jurisdiction where the lawyer is licensed, the role of other California lawyers in the representation, and other factors relevant to whether the California client is protected consistent with the purpose of the UPL rule and laws.

A lawyer who is licensed to practice law in California, but who resides in another jurisdiction where the lawyer is not licensed while continuing to remotely practice law under the lawyer's California license, must adhere to California's rules and law as required to maintain a California law license and must also comply with the applicable regulations of the jurisdiction where the lawyer resides but is not licensed. CRPC Rule 5.5(a); see also ABA Model Rule 5.5(a). A California lawyer who fails to comply with that jurisdiction's UPL regulations could be at risk for criminal and/or civil liability and could also be at risk for discipline for violation of CRPC Rule 5.5(a).

AUTHORITIES INTERPRETED:

California Rules of Professional Conduct, rule 5.5. Business and Professions Code sections 6125, 6126.

SCENARIO 1 FACTS:

Lawyer is licensed to practice law in a jurisdiction outside of California ("State A"). Lawyer is not licensed in California. Lawyer works for a law firm based in State A ("State A Firm"). State A Firm has no offices in California and has no plan to expand its business to California. Lawyer wants to move to California and reside there permanently for personal reasons. Lawyer and State A Firm want Lawyer to continue to practice law remotely on behalf of State A Firm from California. Lawyer's professional office will continue to be located at State A Firm's business address in State A. Lawyer and State A Firm will not advertise or otherwise hold Lawyer out as admitted to practice law in California and will make clear that Lawyer is only licensed in State A. Lawyer's work with State A Firm will continue to be limited to representing clients in accord with the rules of State A where Lawyer is licensed. Therefore, Lawyer's work for State A Firm will remain the same as it has been for the span of Lawyer's employment with State A Firm while Lawyer was physically working for State A Firm in State A, except for the fact that Lawyer will now be physically residing in California and using modern technology to work remotely for State A Firm.

Can Lawyer, who is a licensed lawyer in good standing in State A, but who is not licensed in California, continue to practice in accordance with Lawyer's State A law license from Lawyer's home in California without violating CRPC Rule 5.5 or B&P Code §§6125-6126?

SCENARIO 1 ANSWER:

Yes, so long as certain precautions are followed. Lawyer must not (1) “practice law in California” within the meaning of B&P Code Section 6125; (2) establish an office or a “systematic or continuous presence” “in California” for “the practice of law” in violation of CRPC Rule 5.5(b)(1); or (3) “hold out to the public or otherwise represent that the lawyer is admitted to practice law in California” in violation of CRPC Rule 5.5(b)(2). The determination of these questions depends on a number of factors, including the extent to which Lawyer’s activities require the protection of California persons or entities from incompetent or unethical attorneys.

- **Practice of Law in California (B&P Code Section 6125)**

B&P Code section 6125 states: “No person shall *practice law in California* unless the person is an active licensee of the State Bar.” A violation of this law is a crime, punishable by up to one year in county jail and a fine of \$1,000. B&P C. §6126(a). It may also preclude an unlicensed lawyer from recovering legal fees for services provided. *Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal. 4th 119, 127 (*Birbrower*).

Rules 9.40-9.49 of the California Rules of Court (CRC) provide exceptions to California’s UPL mandates and allow certain persons who are not licensed in California to temporarily practice law in the state if the express requirements are met. These exceptions are for Pro Hac Vice Counsel (CRC 9.40); Appearances by Military Counsel (CRC 9.41); Registered Military Spouse Attorney (CRC 9.41.1); Certified Law Students (CRC 9.42); Out-of-State Attorney Arbitration Counsel (CRC 9.43); Registered Foreign Legal Consultant (CRC 9.44); Registered Legal Aid Attorneys (CRC 9.45); Registered In-House Counsel (CRC 9.46); Attorneys Practicing Law Temporarily in California As Part of Litigation (CRC 9.47); Nonlitigating Attorneys Temporarily in California to Provide Legal Services (CRC 9.48); and Provisional Licensure of 2020 Law School Graduates (CRC 9.49).

What constitutes “temporary” practice under these rules is a matter of debate [\[1\]](#), but the rules do not apply here anyway, because the facts in Scenario 1 state that Lawyer will practice law as permitted under Lawyer’s State A law license while residing permanently in California. CRC 9.40, 9.47 and 9.48 specifically prohibit non-California licensed lawyers who are a resident of California from qualifying to “practice law in California” under these rules. CRC 9.40(a)(1); 9.47(d)(3); 9.48(d)(3).

The question, then, is whether Lawyer is engaged in the “practice of law in California” within the meaning of B&P Code section 6125. “Practicing law” includes appearing in court, providing legal advice and counsel, and preparing legal instruments and contracts by which legal rights are secured, even if the matter is not in court. *Estate of Condon* (1998) 65 Cal.App.4th 1138, 1142-43 (*Condon*). Although previous opinions had arrived at this meaning of the “practice of law,” it was the California Supreme Court’s decision in *Birbrower, supra*, 17 Cal. 4th 119, that first defined what is meant by the practice of law “in California” as used in B&P Code section 6125.

In *Birbrower*, New York lawyers resided in New York but traveled several times to California while representing a California client against a California opponent in a California-based arbitration governed by California law. While in California, they advised the client, negotiated with the opponent, and initiated an arbitration. No California lawyer was involved in the representation.

The California Supreme Court held that the law firm was barred from recovering fees for services performed in California because it had engaged in “unauthorized practice *in California* on more than a limited basis, and no firm attorney engaged in that practice was an active member of the California state bar.” 17 Cal. 4th at 131 (emphasis in original); *see also id.* at 135, 136 (referring to the firm’s “extensive” practice in California). The Court further held that the doctrine of unauthorized practice did not bar recovery for “the limited legal services the firm performed for [the California client] in New York to the extent they did not constitute practicing law in California.” *Id.* at 137.

Although the New York lawyers in *Birbrower* had practiced law while physically present in California, the Court made clear that physical presence in the state is not needed for a finding of unauthorized practice. 17 Cal. 4th at 128. In dictum, the Court stated that a lawyer who did not physically practice law in California might do so virtually, by “advising a California client on California law in connection with a California legal dispute by telephone, fax, computer or other modern technological means.” *Id.* at 128-29. On the other hand, the Court “reject[ed] the notion that a person automatically practices law ‘in California’ whenever that person practices California law anywhere, or ‘virtually’ enters the state by telephone, fax, e-mail, or satellite.” *Id.* at 128-29. The Court ruled:

the practice of law “in California” entails sufficient contact with the California client to render the nature of the legal service a clear legal representation. In addition to a quantitative analysis, we must consider the nature of the unlicensed lawyer’s activities in the state. Mere fortuitous or attenuated contacts will not sustain a finding that the unlicensed lawyer practiced law “in California.” The primary inquiry is whether the unlicensed lawyer engaged in *sufficient activities in the state, or created a continuing relationship with the California client* that included legal duties and obligations.

Id. at 128, emphasis added. The purpose of B&P Code section 6125, the Court noted, is “to protect California citizens from incompetent attorneys.” *Id.* at 132.

Shortly after *Birbrower*, the California Court of Appeal decided *Condon*, *supra*, 65 Cal. App. 4th 1138, upon remand from the California Supreme Court with directions to vacate and reconsider a prior decision in light of *Birbrower*. In *Condon*, a Colorado lawyer represented the Colorado-based executor of a California decedent’s will that devised California property and was the subject of proceedings in a California court. The client was represented in all court proceedings by California counsel. The lawyer’s representation involved extensive virtual contact with California and a modest amount of practice while physically present there. Despite the strong California connections in the case and the lawyer’s work while physically present in California, the Court of Appeal held that because the lawyer’s client was a Colorado resident, none of the lawyer’s conduct violated the UPL statute. For the *Condon* court, the essential ingredient in the *Birbrower* rule was whether the “client is a ‘California client,’ one that either resides in or has its principal place of business in California. This conclusion is not only logical, it comports with the reason underlying the proscription of section 6125.” (*Condon*, *supra*, 65 Cal.App.4th at 1145.) Further, the court observed:

In resolving the issue of applicability of section 6125 it is useful to look to the reason underlying the proscription of section 6125. ... If indeed the goal of the statute is to protect California citizens from the incompetent and unscrupulous practitioner (licensed or unlicensed), it simply should *make no difference whether the out-of-state lawyer is practicing California law or some other breed* since the impact of incompetence on the client is precisely the same.

Id. at 1147, emphasis added.

The court in *Condon* concluded: “It is therefore obvious that, given the facts before us, the *client’s* residence or its principal place of business is determinative of the question of whether the practice is proscribed by section 6125. Clearly the state of California has no interest in disciplining an out of state attorney practicing law on behalf of a client residing in the lawyer’s home state.” *Condon*, *supra*, 65 Cal.App.4th at 1147, emphasis added.

Neither *Birbrower* nor *Condon* involved a non-California licensed lawyer residing in California. Nonetheless, *Birbrower* and *Condon* underscore relevant principles concerning the application of section 6125: (1) the physical presence of the lawyer in California is neither necessary nor sufficient for a determination that a lawyer is practicing law in the state; (2) of primary importance is whether the client resides in California, since the statutory purpose of section 6125 is to protect Californians; and (3) the law at issue in the representation is not necessarily decisive, particularly if, as in *Condon*, a California lawyer is handling the California law aspects of the representation. [2]

Here, Lawyer’s residence in California would be a factor in deciding whether the Lawyer is practicing law in California, but it would not be determinative. Instead, the “primary inquiry is whether the unlicensed lawyer engaged in *sufficient activities in the state*, or created a continuing relationship with the California client that included legal duties and obligations.” *Birbrower*, *supra*, 17 Cal.4th at 128, emphasis added. Under the facts in Scenario 1, Lawyer has no law office in California, is not holding out as a lawyer licensed in California, and is not soliciting or representing California persons or entities. Given these facts, and provided Lawyer is properly practicing law as allowed under the jurisdiction where Lawyer is licensed, Lawyer is likely not practicing law in California under *Birbrower* or *Condon* and California should have no interest in disciplining Lawyer.

A closer and more complicated question would arise if Lawyer began working on matters for one or more clients of State A Firm who are California persons or entities. [3] The answer may depend on the nature of the representation, whether the representation complies with the regulations of the jurisdiction where the lawyer is licensed, the communications between the lawyer and the client concerning where the lawyer is licensed and any limitation on the lawyer’s conduct, the role of other California lawyers in the representation, and the frequency and significance of such representations in the lawyer’s practice.

The initial issue would be the nature of the representation. If a lawyer engaged in activities in California similar to those of the lawyers in *Birbrower* – involving both a California client and a matter located in California and controlled by California law – and there is no California lawyer involved in advising the California client, then it is likely the lawyer would be found to be practicing law in California. Similarly, if a lawyer reached out to provide extensive advice to an individual California tort claimant about how to litigate or settle a dispute centered in California and governed by California law (and was not permitted to practice law in California temporarily under CRC Rules 9.40-9.49), the lawyer would more likely be found to be practicing law in California than if the lawyer was, for example, a Delaware-admitted corporate law specialist who was approached by the general counsel of a California-based Delaware LLC to advise about an internal dispute governed by Delaware law.

The role of any licensed California lawyer in the representation would also be considered. *Condon* makes clear that, even in matters with a significant California dimension, the presence of California licensed counsel who assumes responsibility for California aspects of the representation can help to avoid a finding of unauthorized practice. See *Winterrowd v. American*

General Annuity Ins. Co., 556 F.3d 815, 821-22 (9th Cir. 2009) (out of state work for a California client on a California federal court lawsuit was not the practice of law in California, when the lawyer was retained after being approached by California counsel of record, who handled all communications with the client, and the decisive issue arose under federal law).

In addition, the determination of whether a lawyer is practicing law in California may turn on the context of the inquiry. *Birbrower* and *Condon* examined whether an attorney was practicing law in California with respect to a particular client in the context of a fee dispute. The State Bar determination of whether a lawyer was practicing law in California, or such a determination in a prosecution under B&P Code section 6125, would likely look at the specific matter(s) in which the lawyer is advising the California person or entity and the type of advice provided, but it might also take into account the totality of the lawyer's practice. The communications between the lawyer and the client may also be assessed to determine whether, when selecting the lawyer, the client knew where the lawyer was licensed and what, if any, relevant limitation on the lawyer's conduct could impact the representation. See also CRPC Rule 1.4(a)(4).

More generally, in line with the holdings in *Birbrower* and *Condon*, if a lawyer was doing nothing more for California persons or entities than the lawyer could permissibly have done when physically in the jurisdiction where the lawyer is licensed in compliance with that jurisdiction's rules and laws (as well as the applicable California rules and laws, including CRC rules 9.40-9.49 where appropriate), the mere fact that the lawyer is living in California for personal reasons while providing those services to California persons or entities might well fall within the rubric of "fortuitous or attenuated contacts" that do not rise to the level of practicing law in California in violation of section 6125. See *Birbrower, supra*, 17 Cal.4th at 128. After all, as *Condon* stated over two decades ago, "[i]t is insular to assume that only California lawyers can be trained in California law. Surely the citizens of states outside of California should not have to retain California lawyers to advise them on California law." *Condon, supra*, 65 Cal.App.4th at 1147. Given the technological developments since *Condon*, and particularly the recent advent of remote representation in response to the COVID-19 pandemic, it would not be unreasonable for the courts and the State Bar to decide that the "practice of law in California" turns less on geography and more on the relative risk of harm posed to California individuals and entities.

- **Office or Systematic or Continuous Presence in California for the Practice of Law**

CRPC Rule 5.5(b)(1) provides that a "lawyer who is not admitted to practice law in California shall not[,] except as authorized by these rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law."

The facts in Scenario 1 are clear that neither State A Firm nor Lawyer has established or intends to establish a physical law office in California. It is also clear that Lawyer has not established, and does not intend to establish, a systematic or regular presence in California "for the practice of law." Lawyer is present in California for Lawyer's personal reasons, not to facilitate the practice of law in California or to develop California clientele. Lawyer is merely embracing modern technology to continue Lawyer's State A law practice in compliance with Lawyer's State A law license. Under the facts of Scenario 1, Lawyer is not in violation of CRPC Rule 5.5(b)(1).

This conclusion is consistent with the purpose underlying CRPC Rule 5.5. Because CRPC Rule 5.5(b)(1) by its terms prohibits activities only for lawyers who are "not admitted to practice law in California," the rule is plainly targeting the maintenance in this state of an office or presence for the purpose of "the practice of law" *in California*, not the practice of law in compliance with the applicable regulations of the jurisdiction where a lawyer is licensed. See CRPC Rule 5.5, Comment ("Paragraph (b)(1) prohibits lawyers from practicing law in California unless otherwise entitled to practice law in this state by court rule or other law," citing, e.g., B&P Code section 6125 et seq.) The term "the practice of law" in CRPC Rule 5.5 must logically be construed as consistent with the term "the practice of law in California" in B&P Code section 6125. Given that Lawyer in Scenario 1 is not engaging in "the practice of law in California" within the meaning of B&P Code section 6125 as discussed *supra*, it would be anomalous to deem Lawyer's presence and activities as a violation of CRPC Rule 5.5(b)(1).

Our conclusion is further supported by recent authoritative interpretations of ABA Model Rule 5.5(b)(1), on which CRPC 5.5(b)(1) is based. ABA Model Rule 5.5(b)(1) states that an unlicensed lawyer shall not "establish an office" or "other systematic and continuous presence" in the jurisdiction for the practice of law. [4] ABA Formal Opinion 495 (December 16, 2020) advised that a local office is not established within the meaning of the rule "by the lawyer working in the local jurisdiction if the lawyer does not hold out to the public an address in the local jurisdiction as an office and a local jurisdiction address does not appear on letterhead, business cards, websites, or other indicia of a lawyer's presence." The ABA opinion further advised that a systematic and continuous presence in the jurisdiction for the practice of law is not established if "the lawyer is neither practicing the law of the local jurisdiction nor holding out the availability to do so." Under those circumstances, the ABA opinion concluded, the "lawyer's physical presence in the local jurisdiction is incidental; it is not for the practice of law."

Similarly, the Florida Bar's Advisory Opinion #2019-4 (approved by the Florida Supreme Court on May 20, 2021) determined that a lawyer who is licensed in one state, works for a law firm in that state, but permanently lives and works from his home in Florida where the lawyer is not licensed, has not established an "office" or a "systematic or continuous presence" in Florida for the "practice of law" because neither the lawyer nor the firm is holding the lawyer out as a Florida attorney,

soliciting Florida clients, or practicing Florida law. Instead, the lawyer is simply using modern technology to remotely practice the law of the state where he is licensed while living in another state unrelated to the attorney's practice.

Consistent with this analysis, other jurisdictions have found violations of versions of ABA Model Rule 5.5 when out-of-state lawyers systematically reached out to "create" multiple relationships with individual clients in a state where the lawyer was not admitted, and to represent those clients in matters centered in that state. See, e.g., *In re Tonwe*, 929 A. 2d 774, 778, 778-89 (Del. 2007) (out-of-state lawyer, who regularly represented in-state clients in in-state matters, and "cultivated a network of in-state contacts" to attract clients, took steps to establish a systematic and continuous presence); *In re Kingsley*, 2008 Del. Lexis 255, 950 A.2d 659 at *13 (Del. 2008) (out-of-state lawyer, who had monthly retainer with in-state accountant to draft documents for in-state clients, established a systematic and continuous presence); Illinois LEO 12-09 (March 2012) (out-of-state lawyer sought work from in-state clients and sought to perform work while present in the state). These cases support the view that versions of ABA Model Rule 5.5, such as CRPC rule 5.5, are centrally aimed at preventing harm to clients in the jurisdiction where the lawyer is not admitted.

- **Holding the Lawyer Out as Admitted to Practice in California**

CRPC Rule 5.5(b)(2) requires that a lawyer who is not licensed in California cannot "hold out to the public or otherwise represent that the lawyer is admitted to practice law in California." B&P Code section 6126 adds that "[a]ny person holding himself or herself out as practicing or entitled to practice law," while not an active licensee of the State Bar, is guilty of a misdemeanor and subject to the same penalty as persons practicing law without a license. B&P C. § 6126(a).

Under the facts of Scenario 1, neither Lawyer nor State A Firm is holding Lawyer out to the public as having a California license or presence. All of Lawyer's and State A Firm's communications about Lawyer or Lawyer's services publicize only the State A contact information and specify that Lawyer is only licensed in State A. All indicia point to Lawyer's practice of law as being in State A, not California. Therefore, under the facts of Scenario 1, Lawyer would not be in violation of CRPC Rule 5.5(b)(2).

- **Protection of the California Public**

As noted, CRPC Rule 5.5 is very similar to ABA Model Rule 5.5 and the versions of Rule 5.5 adopted in Florida and Utah. Ethics opinions from the ABA, Florida, and Utah emphasize that the purpose of such rules is to protect the public. In particular, ABA Formal Opinion 495 (December 16, 2020) advises: "The purpose of [the UPL Rule in ABA Model Rule 5.5] is to protect the public from unlicensed and unqualified practitioners of law. That purpose is not served by prohibiting a lawyer from practicing the law of a jurisdiction in which the lawyer is licensed, for clients with matters in that jurisdiction, if the lawyer is for all intents and purposes invisible as a lawyer to a local jurisdiction where the lawyer is physically located, but not licensed." The Florida Bar's Standing Committee on UPL reasons in its opinion that where the lawyer "is not providing legal services to Florida clients," "no Floridians are being harmed" and so "there are no interests of Floridians that need to be protected[.]" The Utah Ethics Advisory Committee Opinion 19-03 (2019) puts it this way: "what interest does the Utah State Bar have in regulating an out-of-state lawyer's practice for out-of-state clients simply because he has a private home in Utah? And the answer is the same – none." See also Maine Ethics Opinion 189 (2005).

The advice offered in these ethics opinions is consistent with *Birbrower, Condon*, and the B&P Code. Under *Birbrower and Condon*, California's overriding purpose for defining and regulating the practice of law in this state is to protect the California public from incompetent, unethical or irresponsible legal representation. *Birbrower, supra*, 17 Cal. 4th at 132; *Condon, supra*, 65 Cal. App. 4th at 1145-47. "Protection of the public . . . shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." B&P Code §6001.1. The State Bar confirms on its website that its mission is public protection. See <http://www.calbar.ca.gov/Public/Free-Legal-Information/FAQ>.

Under the facts of Scenario 1, neither Lawyer nor State A Firm is representing or otherwise holding Lawyer out as a California licensed lawyer to California persons or entities; instead, Lawyer is merely continuing Lawyer's work with State A Firm in accord with the rules of Lawyer's State A license, albeit remotely from a location in California. Neither Lawyer nor State A Firm has a law office in California. All of Lawyer's and State A Firm's communications about Lawyer and Lawyer's services specify that Lawyer is licensed only in State A. The mere fact of Lawyer's residence in California poses no greater risk of harm to a California person or entity than if Lawyer resided in State A. Under these facts, Lawyer is not violating B&P Code sections 6125 or CRPC Rule 5.5(b).

SCENARIO 2 FACTS:

Can Lawyer, who is only licensed to practice law in California, physically reside in State A and ethically practice law as permitted by Lawyer's California law license from Lawyer's State A location?

SCENARIO 2 ANSWER:

It depends on the law of the jurisdiction where Lawyer is residing.

CRPC Rule 5.5(a) states:

A lawyer admitted to practice law in California shall not:

- (1) practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction; or
- (2) knowingly* assist a person* in the unauthorized practice of law in that jurisdiction.

Here, Lawyer would need to analyze State A's rules of professional conduct and any other rules or laws concerning the unauthorized practice of law in State A to determine whether Lawyer is ethically permitted by State A to remotely practice law pursuant to Lawyer's California law license while being physically located in State A without a State A law license. Lawyer should consult applicable ethics opinions, statutes, and rules of professional conduct for State A. Failure to adhere to State A's regulations could be found to violate CRPC Rule 5.5(a).

CONCLUSION:

For the lawyer who is licensed to practice law in a jurisdiction other than California, but who is residing in California while remotely practicing law as authorized by the lawyer's out-of-state law license, the lawyer will not be in violation of CRPC Rule 5.5(b) or B&P Code Sections 6125-6126 if the lawyer complies with the conditions outlined in this opinion. The purpose underlying California UPL regulations is to protect California persons and entities, and under these facts the lawyer does not pose a greater risk of harm to California persons or entities by engaging in his or her practice remotely from California.

For the lawyer who is licensed to practice in California, but who is residing in another jurisdiction where the lawyer is not licensed, the lawyer must not practice law in violation of the regulations of the profession in that jurisdiction, including any rules or laws of the jurisdiction that concern the unauthorized practice of law. The lawyer must also adhere to California's rules and laws as needed to maintain a California law license.

This opinion is issued by the Legal Ethics Committee of the Bar Association of San Francisco. It is advisory only. It is not binding upon the courts, the State Bar of California, its Board of Trustees, any persons, or tribunals charged with regulatory responsibilities, or any licensee of the State Bar.

Footnotes

1. Similar to allowances made in California, ABA Model Rule 5.5(c)(4) provides that lawyers 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 the local jurisdiction that arise out of or reasonably relate to the lawyer's practice in a jurisdiction where the lawyer is admitted to practice. Comment [6] to ABA Model Rule 5.5 notes that there is no single definition for what is temporary and that it may include services that are provided on a recurring basis or for an extended period of time. See ABA Formal Opinion 495 (December 16, 2020), which further discusses the need for lawyers to work remotely as a result of the pandemic and the concern that the time period for this "temporary" need is uncertain.
2. In addition, CRPC Rule 5.5, adopted after *Birbrower and Condon*, prohibits lawyers from engaging in specified activities if they are not entitled to practice law in California. See CRPC Rule 5.5, Comment [1]. These activities may be indicia of the unauthorized practice of law within the meaning of B&P Code section 6125. We discuss CRPC Rule 5.5 *infra*.
3. The facts in Scenario 1 do not involve such a situation.
4. While CRPC Rule 5.5(b)(1) prohibits a person not admitted to practice in law in California from having a "systematic or continuous presence in California for the practice of law," ABA Model Rule 5.5(b)(1) prohibits a person not admitted to practice in the jurisdiction from having a "systematic and continuous presence."

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