

## **Unauthorized Practice of Law ... Ohio guidance? With Regard to Application of Alice Auclair Jones**

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A matter currently before the Ohio Supreme Court raises a troubling question about the unauthorized practice of law. If a lawyer is working while physically located in a jurisdiction where that lawyer is not licensed, is the lawyer committing the unauthorized practice of law?

In the case of Alice Auclair Jones, *Supreme Court of Ohio Case No. 2018-0496*, a lawyer licensed in Kentucky relocated to Ohio in 2015, agreeing with her firm that she would apply for admission to the Ohio bar, and, pending admission, that she would practice Kentucky law exclusively. During that time, she maintained a professional phone number and address in Kentucky, travelled to Kentucky as necessary for work and did not offer legal advice nor participate in any way in any matters related to Ohio law.

Nearly two years after the application for admission was filed, the Ohio Board of Commissioners on Character and Fitness, a panel charged with determining admissibility to the Ohio bar, concluded that Ms. Jones did not meet the character and fitness standards for admission to the Ohio bar because she had been violating the Rules of Professional Conduct by her systematic and continuous presence in Ohio, even though she was solely practicing Kentucky law.

Specifically, Ohio Rule 5.5 permits “– [a] lawyer who is admitted in another [U.S.] Jurisdiction, is in good standing in the jurisdiction in which the lawyer is admitted, and regularly practices law [to] provide legal services on a temporary basis in [Ohio] if . . . the services are reasonably related to a pending or potential proceeding before a tribunal in . . . another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law . . . to appear in such proceeding . . .; the services are *reasonably* related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in . . . another jurisdiction, if the services arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission; the lawyer engages in negotiations, investigations, or other non-litigation activities that arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice.”

Ohio Rule 5.5 largely tracks the Model Rules of Professional Conduct, but specifically authorizes a lawyer to engage in non-litigation activities while in Ohio if those activities are connected to the lawyers’ work in the state in which the lawyer is licensed.

Transactional and in-house lawyers’ practices frequently require them to travel nationally and to practice law on projects in foreign states. Law practices merge and relocate to follow client and business needs, and, with the aid of laptops and wireless internet, lawyers can travel almost anywhere while maintaining practices in home states.

One might ask, what is ‘systematic and continuous’ anyway? Is it the unauthorized practice of law for a Pennsylvania lawyer to regularly travel to her country home in Ohio where, every Saturday morning, she drafts leases and emails them out for review? Is it systematic to visit remote offices of your law firm for monthly meetings, and to practice law in that office? Is it not systematic and continuous to spend three months every winter basking in the sunshine of a southern state while working remotely for part of every day?

Amicus briefs argue that the Board’s interpretation of the rule would hinder the mobility of out-of-state attorneys, restrict the recruiting of talented lawyers, and preclude clients from having the representation of their choice. This interpretation does not protect against the dangers of unskilled representation or against any identifiable threat of harm posed by attorneys from other states serving clients from Ohio while awaiting admission. Moreover, the Board’s approach does not acknowledge today’s national and global economy.

Rule 5.5 provides a safe harbor that allows lawyers to temporarily ‘provide legal services’ outside of their licensed jurisdiction, but should the physical location of the lawyer determine the authority to regulate the activity of lawyers? In this case, the lawyer’s work had impact in Kentucky, not in Ohio. It is Kentucky concern that its citizens have skilled representation, and that lawyers practicing in Kentucky courts understand the applicable laws and rules.

Ideally, the Ohio Supreme Court will realize that location is largely irrelevant to the practice of law. In the current legal and technological landscape, attorneys can work anywhere in the world, and the realities of modern practice are simply not reflected in the generally adopted rules of professional conduct.