

**PROPOSED AMENDMENTS TO THE OHIO RULES OF
PROFESSIONAL CONDUCT AND THE SUPREME COURT RULES FOR
THE GOVERNMENT OF THE BAR OF OHIO**

Comments Requested: The Supreme Court of Ohio will accept public comments until May 6, 2021, on the following proposed amendments to the Ohio Rules of Professional Conduct and Supreme Court Rules for the Government of the Bar of Ohio.

Comments on the proposed amendments should be submitted in writing to: Gina Palmer, Director of Attorney Services, Supreme Court of Ohio, 65 South Front Street, 5th Floor, Columbus, Ohio 43215-3431, or gina.palmer@sc.ohio.gov not later than May 6, 2021. Please include your full name and mailing address in any comments submitted by e-mail.

Key to Proposed Amendment:

1. Existing language appears in regular type. Example: text
2. Existing language to be deleted appears in strikethrough. Example: ~~text~~
3. New language to be added appears in underline. Example: text

OHIO RULES OF PROFESSIONAL CONDUCT

RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

[Existing language unaffected by the amendments is omitted to conserve space]

(d) A lawyer admitted and in good standing in another United States jurisdiction may provide legal services in this jurisdiction through an office or other systematic and continuous presence in any of the following circumstances:

(1) the lawyer is registered in compliance with Gov. Bar R. VI, Section 6 and is providing services to the employer or its organizational affiliates for which the permission of a *tribunal* to appear *pro hac vice* is not required;

(2) the lawyer is providing services that the lawyer is authorized to provide by federal or Ohio law;

(3) the lawyer is registered in compliance with and is providing pro bono legal services as permitted by Gov. Bar R. VI, Section 6;

(4) the lawyer is providing services that arise out of, or are reasonably related to, the lawyer's practice in a jurisdiction in which the lawyer is admitted, provided the lawyer does not do any of the following:

(a) solicit business clients within this jurisdiction or appear before Ohio tribunals, except as otherwise authorized by rule or law:

(b) state, imply, or hold himself or herself out as an Ohio lawyer or as being admitted to practice law in Ohio:

(c) create a public presence or profile as being a lawyer based in Ohio;

(d) violate the provisions of Rules 5.4, 7.1, and 7.5.

Comment

[Existing language unaffected by the amendments is omitted to conserve space]

[4] Other than as authorized by law or this rule, a lawyer who is not admitted to practice generally in this jurisdiction violates division (b)(1) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law of this jurisdiction. Presence may be systematic and continuous even if the lawyer is not physically present here. For example, advertising in media specifically targeted to Ohio residents or initiating contact with Ohio residents for solicitation purposes could be viewed as a systematic and continuous presence.

47 Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to
48 practice law in this jurisdiction. See also Rules 7.1 and 7.5(b).

49

50 [5] There are occasions in which a lawyer admitted to practice in another United States
51 jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal
52 services on a temporary basis in this jurisdiction under circumstances that do not create an
53 unreasonable risk to the interests of their clients, the public, or the courts. Division (c) identifies
54 four such circumstances. The fact that conduct is not so identified does not imply that the conduct
55 is or is not authorized. With the exception of divisions (d)(1) ~~and (d)(2)~~ through (d)(4), this rule
56 does not authorize a lawyer to establish an office or other systematic and continuous presence in
57 this jurisdiction without being admitted to practice generally here.

58

59 **[Existing language unaffected by the amendments is omitted to conserve space]**

60

61 [15] Division (d) identifies ~~three~~ four circumstances in which a lawyer who is admitted
62 to practice in another United States jurisdiction and in good standing may establish an office or
63 other systematic and continuous presence in this jurisdiction for the practice of law as well as
64 provide legal services on a temporary basis. Except as provided in divisions (d)(1) through
65 (d)(~~3~~(4)), a lawyer who is admitted to practice law in another jurisdiction and who establishes an
66 office or other systematic or continuous presence in this jurisdiction must become admitted to
67 practice law generally in this jurisdiction.

68

69 [16] ~~RESERVED] Lawyers practicing under Prof. Cond. R. 5.5(d)(4) and their law firms
70 are required to indicate the jurisdictional limitations of the lawyer or lawyers not licensed to
71 practice in Ohio. The lawyer's letterhead, business cards, website and advertising materials, fee
72 agreement, and even office signage containing the designation "Attorney at Law" should
73 affirmatively state that the lawyer is not admitted in Ohio. See also Rule 7.1 and 7.5.~~

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75 **[Existing language unaffected by the amendments is omitted to conserve space]**

76

77 [22] ~~Division (d)(4) allows an attorney admitted in another United States jurisdiction to
78 practice the law of that jurisdiction while working remotely from Ohio. A lawyer practicing
79 remotely will not be found to have engaged in the unauthorized practice of law in Ohio based
80 solely on the lawyer's physical presence in Ohio, though the lawyer could through other conduct
81 violate the rules governing the unauthorized practice of law.~~

82

83 **Comparison to former Ohio Code of Professional Responsibility**

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85 No change in Ohio law or ethics rules is intended by adoption of Rule 5.5.

86

87 Rule 5.5(a) is analogous to DR 3-101.

88

89 Rules 5.5(b), (c), and (d) describe when a lawyer who is not admitted in Ohio may engage
90 in activities within the scope of the practice of law in this state. The Ohio Code of Professional
91 Responsibility contains no provisions comparable to these proposed rules; rather, the boundaries

92 of permitted activities in Ohio by a lawyer admitted elsewhere are currently reflected in case law
93 and the Supreme Court Rules for the Government of the Bar of Ohio.

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95 **[Existing language unaffected by the amendments is omitted to conserve space]**

96 **SUPREME COURT RULES FOR THE GOVERNMENT OF THE BAR OF OHIO**

97
98 **RULE I. ADMISSION TO THE PRACTICE OF LAW**

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100 **[Existing language unaffected by the amendments is omitted to conserve space]**

101
102 **Section 19. Practice Pending Admission during the Admission to the Practice of**
103 **Law Process.**

104
105 (A)(1) An applicant who has completed and filed with the Office of Bar Admissions one
106 of the following applications for the admission to the practice of law may file with the Office an
107 Application to Practice Pending Admission during the admission process pursuant to division
108 (A)(4) of this section:

109
110 **[Existing language unaffected by the amendments is omitted to conserve space]**

111
112 (d) Submits within ninety days of providing Ohio legal services ~~in Ohio~~ a complete
113 application for admission to practice law in accordance with this rule and on forms furnished by
114 the Office of Bar Admissions. An applicant who submits a completed application after the ninety
115 days may petition the Office of Bar Admissions to waive this provision for good cause;

116
117 (e) Reasonably expects to fulfill all of the requirements for admission to the practice
118 of law pursuant to this rule;

119
120 (f) Associates with an active Ohio lawyer who is admitted to practice in Ohio, is in
121 good standing, and has agreed to associate with the applicant, ~~unless the applicant files an affidavit~~
~~on a form furnished by the Office of Bar Admissions affirming that during the application process~~
~~the applicant will only practice the law of the jurisdiction in which the applicant is already~~
~~admitted;~~

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126 **[Existing language unaffected by the amendments is omitted to conserve space]**

127
128 (D) The authority of an applicant to practice law pursuant to this section shall terminate
129 immediately upon the occurrence of any of the following:

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131 (1) The time period authorized by division (A)(2) of this section has expired and no
132 extension has been granted;

133
134 (2) The applicant withdraws the applicant's application for admission to the practice
135 of law;

136
137 (3) The Application for Admission to the Practice of Law without Examination is
138 disapproved, the Application to Transfer UBE Score is denied, or the applicant fails the Ohio bar
139 examination;

141 (4) ~~If required pursuant to division (A)(2)(f) of this section, the~~ The applicant fails to
142 remain associated with an active Ohio attorney in good standing pursuant to division (A)(2)(f) of
143 this section.

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146 **RULE XII. PRO HAC VICE ADMISSION**

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148 **[Existing language unaffected by the amendments is omitted to conserve space]**

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150 **Section 2. Requirements for Permission to Appear Pro Hac Vice**

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152 (A) A tribunal of this state may grant permission to appear pro hac vice to an attorney
153 who is admitted to practice in the highest court of a state, commonwealth, territory, or possession
154 of the United States or the District of Columbia, or who is admitted to practice in the courts of a
155 foreign state and is in good standing to appear pro hac vice in a proceeding.

156

157 (1) An attorney is eligible to be granted permission to appear pro hac vice pursuant to
158 this rule if any of the following apply:

159

160 (a) The attorney neither resides in nor is regularly employed at an office in this
161 state;

162

163 (b) The attorney is registered for corporate status in this state pursuant to Gov.
164 Bar R. VI, Section 3;

165

166 (c) The attorney resides in this state but lawfully practices from offices in one
167 or more other states, including lawful remote practice pursuant to Prof.Cond.R.
168 5.5(d)(4);

169

170 (d) The attorney maintains an office or other systematic and continuous
171 presence in this state pursuant to Prof.Cond.R. 5.5(d)(2) or (d)(4);

172

173 (e) The attorney has permanently relocated to this state in the last 120 days and
174 is currently an applicant pending admission under Gov. Bar R. I.

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176 **[Existing language unaffected by the amendments is omitted to conserve space]**