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July 6, 2023

Ms. Kennon Wooten, Chair
State Bar of Texas Board of Directors
[REDACTED]

RE: Submission of Proposed Rule Recommendations – Rule 5.05, Texas Disciplinary Rules of Professional Conduct

Dear Ms. Wooten:

Pursuant to Section 81.0875 of the Texas Government Code, the Committee on Disciplinary Rules and Referenda initiated the rule proposal process for proposed Rule 5.05, Texas Disciplinary Rules of Professional Conduct, relating to Unauthorized Practice of Law; Remote Practice of Law. The Committee published the proposed rule in the *Texas Bar Journal* and the *Texas Register*. The Committee solicited public comments and held a public hearing on the proposed rule. At its June 7, 2023, meeting, the Committee voted to recommend the proposed rule to the Board of Directors.

Included in this submission packet, you will find the proposed rule recommended by the Committee, as well as other supporting materials. Section 81.0877 of the Government Code provides that the Board is to vote on each proposed disciplinary rule recommended by the Committee not later than the 120th day after the date the rule is received from the Committee. The Board can vote for or against a proposed rule or return a proposed rule to the Committee for additional consideration.

As a reminder, if a majority of the Board approves a proposed rule, the Board shall petition the Supreme Court of Texas to order a referendum on the proposed rule as provided by Section 81.0878 of the Government Code.

As always, thank you for your attention to this matter and for your service to the State Bar. Should the Board require any other information, please do not hesitate to contact me.

Committee on Disciplinary Rules and Referenda
P.O. Box 12487, Austin, TX 78711

cdr@texasbar.com

www.texasbar.com/cdr

Sincerely,

A handwritten signature in cursive script, appearing to read "Lewis Kinard".

Lewis Kinard
Chair, Committee on Disciplinary Rules and
Referenda

cc: Cindy V. Tisdale: [REDACTED]

Steve Benesh: [REDACTED]

Laura Gibson: [REDACTED]

Trey Apffel

Ray Cantu

KaLyn Laney

Seana Willing

Chris Ritter

Ross Fischer

Committee on Disciplinary Rules and Referenda

Overview of Proposed Rule

Texas Disciplinary Rules of Professional Conduct

Rule 5.05. Unauthorized Practice of Law; Remote Practice of Law

Provided here is a summary of the actions and rationale of the Committee on Disciplinary Rules and Referenda (Committee) related to proposed Rule 5.05 of the Texas Disciplinary Rules of Professional Conduct (TDRPC), relating to Unauthorized Practice of Law; Remote Practice of Law. The Committee initiated the rule proposal process on September 7, 2022.

Actions by the Committee

- **Initiation** – The Committee voted to initiate the rule proposal process at its September 7, 2022, meeting.
- **Publication** – The proposed rule was published in the March 2023 issue of the *Texas Bar Journal* and the March 3, 2023, issue of the *Texas Register*. The proposed rule was concurrently posted on the Committee’s website. Information about the public hearing and the submission of public comments was included in the publications and on the Committee’s website.
- **Additional Outreach** – Email notifications regarding the proposed rule were sent to all Texas lawyers (other than those who have voluntarily opted out of receiving email notices), Committee email subscribers, and other potentially interested parties on March 21, 2023, and April 4, 2023. An additional email notification was sent to Committee email subscribers on April 7, 2023.
- **Public Comments** – The Committee accepted public comments through April 13, 2023. The Committee received written public comments from fifteen individuals on the proposed rule.
- **Public Hearing** – On April 12, 2023, the Committee held a public hearing by Zoom teleconference. Four individuals addressed the Committee at the public hearing.
- **Recommendation** – The Committee voted at its June 7, 2023, meeting to recommend the proposed rule, as published, to the Board of Directors.

Overview

Current Rule 5.05, TDRPC, states that a lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction. Proposed Rule 5.05 would provide guidance on how and when a Texas lawyer engages in the unauthorized practice of law, particularly if the lawyer practices law in multiple jurisdictions. The Committee recognizes that changes in technology and mobility have impacted the multijurisdictional practice of law and the remote practice of law.

First, the proposed rule would require that only a lawyer who is admitted to practice in Texas can represent that the lawyer is admitted to practice in Texas. Second, the proposed rule

would permit a lawyer who is admitted to practice law in a jurisdiction outside of Texas to provide legal services, but only to the lawyer's employer or its organizational affiliates. Third, the proposed rule would expressly permit a lawyer who is not admitted to practice in Texas, but who is authorized to practice law in one or more jurisdictions, to practice law from a location in Texas with certain restrictions. Those restrictions would prohibit the lawyer from holding out that the lawyer is authorized to practice law in Texas or has an office for the practice of law in Texas, soliciting or accepting residents or citizens of Texas as clients on matters that require advice on the state or local law of Texas, and correcting the misunderstanding if a person with whom the lawyer is dealing believes that the lawyer is authorized to practice law in Texas.

As part of its review and study of Rule 5.05, the Committee consulted case law in various jurisdictions and advisory opinions from legal agencies and organizations throughout the country. The Committee considered documents and perspectives of Texas entities that regulate Texas lawyers, such as committees of the Supreme Court of Texas, including the Unauthorized Practice of Law Committee (UPLC), committees of the State Bar of Texas, including the Professional Ethics Committee of the State Bar of Texas, the Chief Disciplinary Counsel, the Texas Board of Law Examiners, and others. The Committee also studied proposed rules currently being formulated and/or recommended by the ABA Commission on Multijurisdictional Practice, the ABA Standing Committee on Ethics and Professional Responsibility, the ABA Center for Professional Responsibility, the Association of Professional Responsibility Lawyers, the National Organization of Bar Counsel, and agencies that govern lawyer professional responsibility in other states.

No Amendments in Response to Public Comments

At the June 7, 2023, meeting, the Committee invited the Chair of the Texas Unauthorized Practice of Law Committee (UPLC) to participate in the discussion of proposed Rule 5.05, as the UPLC had recommended revisions to the published rule proposal at the public hearing on April 12, 2023, and during the comment period ending on April 13, 2023. After further discussion, there were no motions to amend the proposed rule. The Committee voted to recommend the proposed rule, as published, to the Board of Directors. The Committee now also recommends interpretive comments to the Board.¹

Additional Documents

Included in the pages that follow this Overview of Proposed Rule are: 1) proposed Rule 5.05 as published in the March 2023 *Texas Bar Journal* (Bates Numbers 000006 – 000007); 2) proposed Rule 5.05 as published in the March 3, 2023, issue of the *Texas Register* (Bates Numbers 000008 – 000010); 3) public comments received in response to the publications through the end of the comment period on April 13, 2023 (Bates Numbers 000011 – 000079); 4) public comment received from Jerry Hall on June 7, 2023, after the Committee voted to recommend the proposed rule to the Board (Bates Numbers 000080 – 000082); 5) the link to the video recording of the Committee's public hearing on proposed Rule 5.05 conducted by Zoom teleconference on April

¹ Interpretive comments are promulgated by the Supreme Court of Texas and are not subject to the rule proposal process set out in Subchapter E-1, Chapter 81, Texas Government Code.

12, 2023,² with the name of each speaker and time-stamp of the speaker's oral comments (Bates Number 000083); 6) the link to the video recording of the Committee's discussion on proposed Rule 5.05 with UPLC Chair Christopher Lowman at the meeting on June 7, 2023 (Bates Number 000083); 7) a memorandum from Professor Frederick C. Moss dated August 22, 2022 (Bates Numbers 000084 - 000085); 8) a memorandum from Committee Member Amy Bresnen, Chair of the Subcommittee on the Multijurisdictional Practice of Law, dated October 26, 2022 (Bates Numbers 000086 – 000087); 9) a draft redline version of proposed Rule 5.05 by Ms. Bresnen considered at the meeting on December 7, 2022 (Bates Numbers 000088 – 000090); 10) a draft redline version of proposed Rule 5.05 by Committee Member Vincent Johnson considered at the meeting on January 4, 2023 (Bates Numbers 000091 – 000093); and 11) a draft clean version of proposed Rule 5.05 by Committee Member Vincent Johnson considered at the meeting on February 1, 2023 (Bates Numbers 000094 – 000095).

² The Committee also heard public comments on proposed Rules 1.08, 3.09, 5.01, and 8.05, TDRPC, on April 12, 2023.

COMMITTEE ON DISCIPLINARY RULES AND REFERENDA PROPOSED RULE CHANGES

Rule 5.05. Unauthorized Practice of Law; Remote Practice of Law

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the committee publishes the following proposed rule. The committee will accept comments concerning the proposed rule through April 13, 2023. Comments can be submitted at texasbar.com/CDRR or by email to cdrr@texasbar.com. The committee will hold a public hearing on the proposed rule by teleconference on April 12, 2023, at 10 a.m. CDT. For teleconference participation information, please go to texasbar.com/cdr/participate.

Proposed Rule (Redline Version)

Rule 5.05. Unauthorized Practice of Law; Remote Practice of Law

- (a) A lawyer shall not:
 - (1) ~~(a)~~ practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
 - (2) ~~(b)~~ assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.
- (b) Unless authorized by other law, only a lawyer who is admitted to practice in this jurisdiction may hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted to practice law in a jurisdiction outside this state, and not disbarred or suspended from practice or the equivalent thereof in any jurisdiction, may provide legal services solely to the lawyer's employer or its organizational affiliates, provided that this jurisdiction does not require pro hac vice admission.
- (d) A lawyer who is not admitted to practice in this State, but who is authorized to practice law in one or more jurisdictions, may practice law from a temporary or permanent residence or other location in this jurisdiction, provided that:
 - (1) The lawyer does not use advertising, oral representations, business letterhead, websites, signage, business cards, email signature blocks, or other communications to hold themselves out, publicly or privately, as authorized to practice law in this jurisdiction, or as having an office for the practice of law in this jurisdiction;
 - (2) The lawyer does not solicit or accept residents or citizens of Texas as clients on matters that the lawyer knows primarily require advice on the state or local law of Texas, except as permitted by Texas or federal law; and
 - (3) When the lawyer knows or reasonably should know that a person with whom the lawyer is dealing mistakenly believes that the lawyer is authorized to practice law in this jurisdiction, the lawyer shall make diligent efforts to correct that misunderstanding.

Comment:

[1] Courts generally have prohibited the unauthorized practice of law because of a perceived need to protect prospective clients from the mistakes of the untrained and the schemes of the unscrupulous, who are not subject to the judicially imposed disciplinary standards of competence, responsibility, and accountability.

[2] ~~Neither statutory nor judicial definitions offer clear guidelines as to what constitutes the practice of law or the unauthorized practice of law. All too frequently, the definitions are so broad as to be meaningless and amount to little more than the statement that "the practice of law" is merely whatever lawyers do or are traditionally understood to do. The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. The definition of the practice of law is established by law and varies from one jurisdiction to another. Judicial development of the concept of "law practice" should be broad enough to cover all situations where there is rendition of legal services for others that calls for the professional judgment of a lawyer and where there is a need for the protections afforded by the regulation of the legal profession.~~

[3] ~~Rule 5.05 does not attempt to define what constitutes the "unauthorized practice of law" but leaves the definition to judicial development. Judicial development of the concept of "law practice" should emphasize that the concept is broad enough—but only broad enough—to cover all situations where there is rendition of services for others that call for the professional judgment of a lawyer and where the one receiving the services generally will be unable to judge whether adequate services are being rendered—and is, therefore, in need of the protection afforded by the regulation of the legal profession. Competent professional judgment is the product of a trained familiarity with law and legal processes; a disciplined, analytical approach to legal problems, and a firm ethical commitment; and the essence of the professional judgment of the lawyer is the lawyer's educated ability to relate the general body and philosophy of law to a specific legal problem of a client. In representing a client with respect to matters involving the law of other jurisdictions where the lawyer is not licensed, the lawyer may need to consult, with the client's consent, lawyers licensed in the other jurisdiction.~~

[4] ~~Paragraph (b) of Rule 5.05—This rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them. So long as the lawyer supervises the delegated~~

work, and retains responsibility for the work, and maintains a direct relationship with the client, the paraprofessional cannot reasonably be said to have engaged in activity that constitutes the unauthorized practice of law. See Rule 5.03. Likewise, paragraph (b) does not prohibit lawyers from providing professional advice and instructions to nonlawyers whose employment requires knowledge of law. For example, claims adjusters, employees of financial institutions, social workers, abstracters, police officers, accountants, and persons employed in government agencies are engaged in occupations requiring knowledge of law; and a lawyer who assists them to carry out their proper functions is not assisting the unauthorized practice of law. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se, since a nonlawyer who represents himself or herself is not engaged in the unauthorized practice of law, provided that the lawyer supervises and takes responsibility for the work, and maintains a direct relationship with the client.

[5] Authority to engage in the practice of law conferred in any jurisdiction is not necessarily a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where doing so violates the regulation of the practice of law in that jurisdiction. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by individual states. In furtherance of the public interest, lawyers should discourage regulations that unreasonably impose territorial limitations upon the right of a lawyer to handle the legal affairs of a client or upon the opportunity of a client to obtain the services of a lawyer of his or her choice. This rule also does not prohibit lawyers from providing professional advice and instructions to nonlawyers whose employment requires knowledge of law, such as claims adjusters, employees of financial institutions, social workers, abstracters, police officers, accountants, and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se, since a nonlawyer who represents himself or herself is not engaged in the unauthorized practice of law.

Proposed Rule (Clean Version)

Rule 5.05. Unauthorized Practice of Law; Remote Practice of Law

- (a) A lawyer shall not:
 - (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
 - (2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.
- (b) Unless authorized by other law, only a lawyer who is admitted to practice in this jurisdiction may hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted to practice law in a jurisdiction outside this state, and not disbarred or suspended from practice or the equivalent thereof in any jurisdiction, may provide legal

services solely to the lawyer's employer or its organizational affiliates, provided that this jurisdiction does not require pro hac vice admission.

- (d) A lawyer who is not admitted to practice in this State, but who is authorized to practice law in one or more jurisdictions, may practice law from a temporary or permanent residence or other location in this jurisdiction, provided that:
 - (1) The lawyer does not use advertising, oral representations, business letterhead, websites, signage, business cards, email signature blocks, or other communications to hold themselves out, publicly or privately, as authorized to practice law in this jurisdiction, or as having an office for the practice of law in this jurisdiction;
 - (2) The lawyer does not solicit or accept residents or citizens of Texas as clients on matters that the lawyer knows primarily require advice on the state or local law of Texas, except as permitted by Texas or federal law; and
 - (3) When the lawyer knows or reasonably should know that a person with whom the lawyer is dealing mistakenly believes that the lawyer is authorized to practice law in this jurisdiction, the lawyer shall make diligent efforts to correct that misunderstanding.

Comment:

[1] Courts generally have prohibited the unauthorized practice of law because of a perceived need to protect prospective clients from the mistakes of the untrained and the schemes of the unscrupulous, who are not subject to the judicially imposed disciplinary standards of competence, responsibility, and accountability.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Judicial development of the concept of "law practice" should be broad enough to cover all situations where there is rendition of legal services for others that calls for the professional judgment of a lawyer and where there is a need for the protections afforded by the regulation of the legal profession.

[3] Competent professional judgment is the product of a trained familiarity with law and legal processes. In representing a client with respect to matters involving the law of other jurisdictions where the lawyer is not licensed, the lawyer may need to consult, with the client's consent, lawyers licensed in the other jurisdiction.

[4] This rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, provided that the lawyer supervises and takes responsibility for the work, and maintains a direct relationship with the client.

[5] This rule also does not prohibit lawyers from providing professional advice and instructions to nonlawyers whose employment requires knowledge of law, such as claims adjusters, employees of financial institutions, social workers, abstracters, police officers, accountants, and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se, since a nonlawyer who represents himself or herself is not engaged in the unauthorized practice of law. **TBJ**

ted by an ineligible applicant; the application is not submitted in the manner and form required by the Application Kit; the application is submitted after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at <https://www.texasattorneygeneral.gov/divisions/grants>. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Create an On-Line Account: Creating an on-line account in the Grant Offering and Application Lifecycle System (GOALS) is required to apply for a grant. *If an on-line account is not created, the Applicant will be unable to apply for funding.* To create an on-line account, the Applicant must email the point of contact information to Grants@oag.texas.gov with the following information:

--First Name

--Last Name

--Email Address *(It is highly recommended to use a generic organization email address if available)*

--Organization Legal Name

Application Deadline: The Applicant must submit its application, including all required attachments, to the OAG by the deadline and the manner and form established in the Application Kit.

Filing Instructions: Strict compliance with the submission instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not submitted by the due date. The OAG will **not** consider an Application if it is not in the manner and form as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: Minimum and maximum amounts of funding are subject to change as stated in the Application Kit. The minimum amount of funding for all programs is \$20,000 per fiscal year. The maximum amount for a program is \$49,500 per fiscal year.

Start Date and Length of Grant Contract Period: The grant contract period (term) is up to two years from September 1, 2023 through August 31, 2025, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method.

Grant Purpose Area: All grant projects must address one or more of the purpose areas as stated in the Application Kit.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of lobbying; indirect costs; fees to administer a subcontract; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact the Grants Administration Division at Grants@oag.texas.gov, or (512) 936-0792.

TRD-202300842

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: February 22, 2023

State Bar of Texas

Committee on Disciplinary Rules and Referenda Proposed
Rule Changes, Rules 1.08, 5.01, 5.05, 8.05, Texas Disciplinary
Rules of Professional Conduct

COMMITTEE ON DISCIPLINARY RULES AND REFERENDA PROPOSED RULE CHANGES

Rule 5.05. Unauthorized Practice of Law; Remote Practice of Law

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the committee publishes the following proposed rule. The committee will accept comments concerning the proposed rule through April 13, 2023. Comments can be submitted at texasbar.com/CDRR or by email to cdrr@texasbar.com. The committee will hold a public hearing on the proposed rule by teleconference on April 12, 2023, at 10 a.m. CDT. For teleconference participation information, please go to texasbar.com/cdr/p/participate.

Proposed Rule (Redline Version)

Rule 5.05. Unauthorized Practice of Law; Remote Practice of Law

- (a) A lawyer shall not:
- (1) ~~at~~ practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
 - (2) ~~be~~ assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.
- (b) Unless authorized by other law, only a lawyer who is admitted to practice in this jurisdiction may hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted to practice law in a jurisdiction outside this state, and not disbarred or suspended from practice or the equivalent thereof in any jurisdiction, may provide legal services solely to the lawyer's employer or its organizational affiliates, provided that this jurisdiction does not require pro hac vice admission.
- (d) A lawyer who is not admitted to practice in this State, but who is authorized to practice law in one or more jurisdictions, may practice law from a temporary or permanent residence or other location in this jurisdiction, provided that:
- (1) The lawyer does not use advertising, oral representations, business letterhead, websites, signage, business cards, email signature blocks, or other communications to hold themselves out, publicly or privately, as authorized to practice law in this jurisdiction, or as having an office for the practice of law in this jurisdiction;
 - (2) The lawyer does not solicit or accept residents or citizens of Texas as clients on matters that the lawyer knows primarily require advice on the state or local law of Texas, except as permitted by Texas or federal law; and
 - (3) When the lawyer knows or reasonably should know that a person with whom the lawyer is dealing mistakenly believes that the lawyer is authorized to practice law in this jurisdiction, the lawyer shall make diligent efforts to correct that misunderstanding.

Comment:

[1] Courts generally have prohibited the unauthorized practice of law because of a perceived need to protect prospective clients from the mistakes of the untrained and the schemes of the unscrupulous, who are not subject to the judicially imposed disciplinary standards of competence, responsibility, and accountability.

[2] ~~Neither statutory nor judicial definitions offer clear guidelines as to what constitutes the practice of law or the unauthorized practice of law. All too frequently, the definitions are so broad as to be meaningless and amount to little more than the statement that "the practice of law" is merely whatever lawyers do or are traditionally understood to do. The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. The definition of the practice of law is established by law and varies from one jurisdiction to another. Judicial development of the concept of "law practice" should be broad enough to cover all situations where there is rendition of legal services for others that calls for the professional judgment of a lawyer and where there is a need for the protections afforded by the regulation of the legal profession.~~

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work, and retains responsibility for the work, and maintains a direct relationship with the client, the paraprofessional cannot reasonably be said to have engaged in activity that constitutes the unauthorized practice of law. See Rule 5.03. Likewise, paragraph (b) does not prohibit lawyers from providing professional advice and instructions to nonlawyers whose employment requires knowledge of law. For example, claims adjusters, employees of financial institutions, social workers, abstractors, police officers, accountants, and persons employed in government agencies are engaged in occupations requiring knowledge of law, and a lawyer who assists them to carry out their proper functions is not assisting the unauthorized practice of law. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se, since a nonlawyer who represents himself or herself is not engaged in the unauthorized practice of law, provided that the lawyer supervises and takes responsibility for the work, and maintains a direct relationship with the client.

[5] Authority to engage in the practice of law conferred in any jurisdiction is not necessarily a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where doing so violates the regulation of the practice of law in that jurisdiction. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by individual states. In furtherance of the public interest, lawyers should discourage regulations that unreasonably impose territorial limitations upon the right of a lawyer to handle the legal affairs of a client or upon the opportunity of a client to obtain the services of a lawyer of his or her choice. This rule also does not prohibit lawyers from providing professional advice and instructions to nonlawyers whose employment requires knowledge of law, such as claims adjusters, employees of financial institutions, social workers, abstractors, police officers, accountants, and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se, since a nonlawyer who represents himself or herself is not engaged in the unauthorized practice of law.

Proposed Rule (Clean Version)

Rule 5.05. Unauthorized Practice of Law; Remote Practice of Law

- (a) A lawyer shall not:
- (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
 - (2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.
- (b) Unless authorized by other law, only a lawyer who is admitted to practice in this jurisdiction may hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted to practice law in a jurisdiction outside this state, and not disbarred or suspended from practice or the equivalent thereof in any jurisdiction, may provide legal

services solely to the lawyer's employer or its organizational affiliates, provided that this jurisdiction does not require pro hac vice admission.

- (d) A lawyer who is not admitted to practice in this State, but who is authorized to practice law in one or more jurisdictions, may practice law from a temporary or permanent residence or other location in this jurisdiction, provided that:
- (1) The lawyer does not use advertising, oral representations, business letterhead, websites, signage, business cards, email signature blocks, or other communications to hold themselves out, publicly or privately, as authorized to practice law in this jurisdiction, or as having an office for the practice of law in this jurisdiction;
 - (2) The lawyer does not solicit or accept residents or citizens of Texas as clients on matters that the lawyer knows primarily require advice on the state or local law of Texas, except as permitted by Texas or federal law; and
 - (3) When the lawyer knows or reasonably should know that a person with whom the lawyer is dealing mistakenly believes that the lawyer is authorized to practice law in this jurisdiction, the lawyer shall make diligent efforts to correct that misunderstanding.

Comment:

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[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Judicial development of the concept of "law practice" should be broad enough to cover all situations where there is rendition of legal services for others that calls for the professional judgment of a lawyer and where there is a need for the protections afforded by the regulation of the legal profession.

[3] Competent professional judgment is the product of a trained familiarity with law and legal processes. In representing a client with respect to matters involving the law of other jurisdictions where the lawyer is not licensed, the lawyer may need to consult, with the client's consent, lawyers licensed in the other jurisdiction.

[4] This rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, provided that the lawyer supervises and takes responsibility for the work, and maintains a direct relationship with the client.

[5] This rule also does not prohibit lawyers from providing professional advice and instructions to nonlawyers whose employment requires knowledge of law, such as claims adjusters, employees of financial institutions, social workers, abstractors, police officers, accountants, and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se, since a nonlawyer who represents himself or herself is not engaged in the unauthorized practice of law. **TBJ**

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

**Texas Disciplinary Rules of Professional Conduct
Rule 5.05. Unauthorized Practice of Law; Remote Practice
of Law**

**Public Comments Received
Through April 13, 2023**

From: [Robert Rountree](#)
To: [cdrr](#)
Subject: Proposed Rule 5.05(c)
Date: Monday, March 6, 2023 2:33:19 PM

I found Rule 5.05(c) confusing for several reasons:

First, the proposed amendment seems to apply to lawyers who have nothing to do with Texas or the Texas Bar. Is this correct?

Second, does "employer" also mean client? Is this intended to apply only to in-house counsel for a business and "organizational affiliates" of the business?

Third, the phrase "may provide legal services solely to the lawyer's employer or its organizational affiliates" seems to directly conflict with Comment [5].

Fourth, It's not clear what problem, if any, proposed Rule 5.05(c) is trying to solve.

My recommendation is to cancel Rule 5.05(c) and keep an eye on whoever drafted it.

Best regards,

Robert Rountree

email: [REDACTED]

TX Bar 798475

From: [REDACTED]
To: [cdrr](#)
Subject: Moss Comments on the Proposed Revisions to TDRPC 1.08, 5.01, 5.05 and 8.05
Date: Thursday, March 16, 2023 1:04:55 PM
Attachments: [Moss Comments on proposed TDRPC 1.08.1.docx](#)
[Moss Comments on Proposed TDRPC 5.05.1.docx](#)
[Moss Comments on Proposed TDRPC 5.01.1.docx](#)
[Moss Comments on proposed TDRPC 8.05.1.docx](#)

Dear Rules and Referendum Committee:

I appreciate your hard work in bringing forward these important and necessary changes to the TDRPC, and the opportunity to submit comments.

I have attached, separately, my comments on the four rules. I have very few suggestions about the Rules themselves. Most of my observations and suggestions concern the proposed Comments.

In reading my suggestions, I hope you will not view them as mere pedantic quibbling with the language of the proposed comments, most of which are taken verbatim from the Model Rules. That many of the Comments that I complain about are from the Model Rules does not, I think, make them sacrosanct. Several are flawed. The Model Rules drafters were fallible, and I think that we (you) can do better.

I fear that revising the Comments at this point may entail some delay and complications, and that this may inhibit the Committee's willingness to revisit and revise Comments. In any event, I hope the Comments can be revised by you or the Court without too much difficulty.

Thank you for your attention and consideration.

Prof. Fred C. Moss (Emeritus)
 Dallas

One does not ask of one who suffers: What is your country and what is your religion? One merely says: You suffer, that is enough for me. –Louis Pasteur, chemist and bacteriologist (27 Dec 1822–1895)

Moss comment on proposed revisions to TDRPC 5.05

1. Regarding Comment [2], the second sentence sound like a passive-aggressive comment directed to the courts as the definers of what is the practice of law. “[You] should be broad enough” How about,

Judicial development of the concept of “law practice” [attempts/endeavors] to be broad enough to cover all situations where

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Remote work for Military Spouse Attorneys - Rule 5.05
Date: Wednesday, March 29, 2023 12:54:52 PM

*** State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments**

Contact

First Name	Sara
Last Name	Staha
Email	[REDACTED]
Member	Yes
Barcard	24088368

Feedback

Subject	Remote work for Military Spouse Attorneys - Rule 5.05
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Comments

Dear Committee Members, I am a military spouse attorney and member of the Texas Bar, writing today in support of the proposed rule changes to 5.05, Remote Practice of Law. As you may know, in February of 2013 Texas became the very first state to initiate a licensing accommodation policy for military spouse attorneys without a formal rule change, signaling the state bar's unwavering support for military families. Following a Resolution signed by the National Conference of Chief Justices, Texas instituted its "License Portability for Military Spouses" ("LPMS") policy, to allow special admission for military spouse attorneys stationed in the state. This policy set the stage for military spouse licensing accommodations across the country, and helped remove long-standing barriers to employment faced by military spouse attorneys. Similar to the positive impact the adoption of LPMS had on military spouse attorneys, the proposed rule changes to 5.05 will clarify and increase accessibility for those employed in the Remote Practice of Law, and extends Texas' unwavering support to military families once again. This clarification makes Texas a remote-friendly work state, which is a common necessity for military spouse attorneys and their families, who move every 2-3 years and have already passed an average of five different state bar exams. For these reasons, I urge you to pass the current proposed rule changes to 5.05, as it relates to the Remote Practice of Law. Respectfully, Sara Staha

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed Changes to Rule 5.05 of DRPC
Date: Thursday, March 30, 2023 10:17:35 AM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Charles Alfred
Last Name	Mackenzie
Email	[REDACTED]
Member	Yes
Barcard	12761550

Feedback

Subject	Proposed Changes to Rule 5.05 of DRPC
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Comments

Proposed new Rule 5.05(c) of the Texas Disciplinary Rules of Professional Conduct lacks clarity. In some sense, every client of an attorney is the attorney's "employer." Particularly when I had a solo practice, that is the way I saw it. Does this "in house counsel" exception to the licensure requirement (presuming I am reading it correctly) anticipate full-time W-2 employment? What about part-time corporate counsel positions? As a Texas solo, among other clients, I also provided in-house counsel services for corporations, sometimes on a retainer for a set number of hours per month. If I had been licensed in another state rather than Texas, would that work have been exempted from the Texas licensure requirement under the proposed rule? And why does the in-house counsel exception not make any connection between the state of licensure and organization's home state (for which, perhaps there might be some nexus to the law of the state where the attorney is licensed)? This rule seems unmanageable, and perhaps is simply an acknowledgement that in-house counsel have for some time ignored the licensure requirements without consequence. The bottom line is this question: Why should an attorney with only one client (although that distinctive is blurred by the "organizational affiliate" extension) in Texas be permitted to practice law in Texas without a Texas license --while providing all the same legal services that another attorney with multiple clients performs as an independent contractor, but who must be licensed and a member of the Texas Bar Association?

From: [Nahdiah Hoang](#)
To: [cdrr](#)
Subject: Proposed Rule 5.05 (Unauthorized Practice of Law; Remote Practice of Law)
Date: Thursday, March 30, 2023 5:08:42 PM

Dear Committee on Disciplinary Rules and Referenda,

I offer two comments about proposed rule 5.05, in my role as staff for the Texas Board of Law Examiners—these comments are not made on behalf of the Board.

First, I note that proposed Rule 5.05(c) would explicitly allow in-house counsel practice by both U.S. attorneys and foreign attorneys without being licensed or registered in Texas. **To preserve the option of in-house counsel registration in the future, for either U.S. or foreign attorneys, the following could be added to the end of proposed rule 5.05(c): "or registration of in-house counsel."**

Second, I note that proposed Rule 5.05(d) seems to explicitly allow, for example, a Canadian lawyer to maintain an office in Texas to practice Canadian law (without being certified as a Foreign Legal Consultant under Rule 14 of the [Rules Governing Admission to the Bar of Texas](#)) as long as they follow the other requirements of 5.05(d). My sense is that explicitly allowing this wouldn't pose any new problems and would not have much impact on the current FLC rule—foreign and out-of-state lawyers who want to maintain a Texas office and be certified as FLCs now would still want to be certified as FLCs under this new rule. But it may be worth clarifying that explicitly allowing this practice does not confer any of the benefits conferred by being certified as an FLC.

Sincerely,
Nahdiah Hoang, Executive Director
Texas Board of Law Examiners
direct: 512-463-8929

From: [Adriano Budri](#)
To: [Andrea Low](#); [cdrr](#); [Nahdiah Hoang](#); [REDACTED]
Subject: Attached copy of Respondent's Attorney Jim Burnham in response of the Grievance Complaint assigned
Date: Monday, April 3, 2023 2:31:59 PM
Attachments: [District7doublestandard.pdf](#)

Re: Attached copy of Respondent's Attorney Jim Burnham in response of the Grievance Complaint assigned

In Attention: Haksoon Andrea Low, Commission for Disciplinary Rules and Referenda (CDRR) Attorney

Dear Ms. Low,

Attached with this email message, you will a copy of Respondent's Attorney Jim Burnham in response of the Grievance Complaint assigned and having as subject Greg Patrick McAllister, and who flagrantly violated the Disciplinary Rules of Professional Conduct, specifically, the Rule 5.05 and of which the subject attorney Greg Patrick McAllister has flagrantly assisted (02) two individuals for unauthorized practice of law in one Texas proceeding and occurred at Statutory Tarrant County Civil County Court at Law Number 1 in Fort Worth, Texas.

You will find important written excerpts in the Respondent's Attorney letter and in response to one Grievance Complaint assigned and whose Respondent's Attorney Jim Burnham has blamed the **Texas Board of Law Examiners** and **the Judge of the case assigned for negligence and omission** and to have been granted admission as Pro Hac Vice Attorney to the flagrant delinquent out of state attorney Charles Eric Stevens from Nashville, Tennessee, and who filed a joint motion with the Attorney Resident in Texas as Sponsor and Supervisor Greg Patrick McAllister in that said Court and without have filed a copy of material evidence of the acknowledgment letter receipt issued by the Texas Board of Law Examiners as material proof that the mandatory fee as non-resident attorney had been paid to the Board and before the applicant to seek participation for admission as Pro Hac Vice in that said Texas proceeding and showing ELIGIBILITY to seek participation for admission as pro hac Vice Attorney in that Texas proceeding.

One observation, the Attorney Resident in Texas as Sponsor and Supervisory has signed electronically the Joint Motion and filed in that Court and seeking admission of the delinquent out of state attorney Charles Eric Stevens to participate as admitted Pro Hac Vice Attorney in that said Texas proceeding.

Both attorney intentionally, deliberately and acting in collusion deceptively concealed the fact that the applicant for admission as Pro hac Vice in that Texas proceeding was one delinquent with the Texas Board of Law Examiners and not having been paid the mandatory fee as non-resident attorney as applicant for admission as Pro hac Vice Attorney in Texas and BEFORE to seek participation for admission as Pro Hac Vice Attorney in that Texas proceeding.

Both attorneys committed fraud in that Texas proceeding and having both attorneys acted in direct collusion and in one deceptive practice of business as Attorneys and having inclusive covered, assisted, aided, and abetted one Paralegal who impersonated herself as "Attorney" in the Invoice filed in that Court by the Attorney in the Record and Resident in Texas Greg Patrick McAllister.

The violation has been much more than the Rule 5.05 and involving dishonesty, lack of candor and bad faith and from the part of the (02) two attorneys and more one Paralegal and being all associates or employees or shareholder of LITTLER MENDELSON P. C, and from two Law Offices of LITTLER MENDELSON P. C., one Law Office located in Dallas, TX and other Law Office located in Nashville, TN.

One impartial and with integrity investigation done by the Dallas Regional CDC Office never would have been dismissed the Grievance Complaint assigned and both subject attorneys would be sanctioned by the District Number 7 Grievance Committee located in Fort Worth, Texas and from the part of the delinquent out of state attorney Charles Eric Stevens and having the District Number 7 of the Grievance Committee as appropriate jurisdiction for administrative investigatory hearing and because the Court that happened the fraud is located in Fort Worth, Tarrant County, Texas in the District Number 7 and for the Attorney resident in Dallas, Dallas County, Texas would be transferred the administrative quasi-judicial adjudicatory proceeding to the District Number 6 of the Dallas, Dallas County, Texas and for one administrative quasi-judicial adjudicatory hearing in that District Number 6 located in Dallas, TX or being transferred by the Respondent's Attorney for one District Court of the Dallas County, Texas and for civil proceeding with the Commission for Lawyer Discipline of the State Bar of Texas. Concerning the delinquent out of state attorney Charles Eric Stevens would keep in the District Number 7 of the Grievance Committee and due to the Court's location and including for civil proceedings in one District Court of the Tarrant County, Texas if the Respondent's Attorney chooses.

So... as you can see, there are Rules for everything with the State Bar of Texas, but the problem of the Rule 5.05 is not enforced by the Chief Disciplinary Counsel of the State Bar of Texas and same when the Chief Disciplinary Counsel receives plenty copies of the material evidence and showing clearly the violation of the Rule and including from other Rules and due to this prevarication of the rules and of which the CDC should enforce, attorneys like Greg Patrick McAllister and resident in Texas and out of state attorneys like Charles Eric Stevens and resident in other jurisdiction and out of the State of Texas, only take advantage about the total leniency, complacency and including with negligence and omission of the designated institutions in charge supposedly to enforce the rules and not make prevarication and like the CDC has done in one valid grievance complaint assigned.

Nothing is changed if the CDC Office is constituted from corrupt employees and dismissing valid grievance complaints assigned and because the subject is one attorney from one Big Law Firm.

Sincerely,

Adriano K. Budri
Complainant / Private Citizen / Constituent

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From: [Adriano Budri](#)
 To: [Andrea Low](#)
 Cc: [cdrr; Nahdiah Hoang](#); [REDACTED]
 Subject: Rule 5.05 (TDRPC)
 Date: Monday, April 3, 2023 6:12:47 AM

In attention: Haksoon Andrea Low, Disciplinary Rules and Referenda Attorney
Ph: 512-427-1323
Email Address: andrea.low@texasbar.com

Re: Rule 5.05 (TDRPC) for Unauthorized Practice of Law in Texas

Dear Ms. Low,

In the website of the CDRR has been published one Report of the year of 2022 that the committee continued to regularly review the disciplinary rules, and that the committee considered the **Rule 5.05, TDRPC**, as it relates to the multijurisdictional practice of law and that it is still in revision.

Below is one narrative of the facts that happened in one Statutory Civil County Court at Law Number 1 located in the County Seat of Fort Worth, County of Tarrant, Texas in the jurisdiction of the District Number 7, Place 1 of the State Bar of Texas for Grievance Committee and having as Regional Office of the Chief Disciplinary Counsel (CDC) in Dallas, Dallas County, Texas.

Recital:

I'm Self Represented Litigant Pro Se, former employee of one Big Nationwide Trucking Company and I filed myself one civil lawsuit at Statutory Tarrant County Civil County Court at Law Number 1 located in Fort Worth, Tarrant County, Texas and having been one civil case about personal injury for defamation and filed in one Statutory Civil County Court at Law with limited territorial jurisdiction in the Tarrant County Boundaries.

The Defendant has been one Individual (not my former employer) and having been represented and obtained assistance from (02) two attorneys and (01) one Paralegal and all working from one Big Law Firm and of which has many law offices scattered in many States of U. S.

I filed a civil lawsuit against my former supervisor of my former employer and being one Defendant as Individual (and not being one Incorporation) in that civil case assigned, however, my former employer and from Murfreesboro, Rutherford County, Tennessee hired and paid (02) two attorneys and (01) one paralegal and to represent the Defendant as Individual in that Statutory Civil County Court at Law and whose attorneys the Defendant as Individual cannot afford the payment of the (02) two expensive Attorneys.

The civil lawsuit has been filed on 12/21/2017 in that Statutory Civil County Court at Law Number 1 in Fort Worth, Texas and the Defendant has been duly served from one Tarrant County Constable in his residence located in that time in Lakeside, Tarrant County, Texas.

On 01/05/2018, one Attorney resident in Dallas, Dallas County, Texas filed his appearance as retainer Defendant's Attorney in the Record and having been hired by the Lead Attorney and

that is one resident located in Nashville, Henderson County, Tennessee and whose Lead Attorney located in Nashville, TN keeps a retainer account contract with my former employer and located the principal corporate headquarters office in Murfreesboro, Rutherford County, Tennessee.

This Attorney resident in Dallas, Dallas County, Texas was working from the same Law Firm but in the Dallas Office and while the Lead Attorney works as shareholder at Nashville Law Office in Tennessee, and the Paralegal hired was working at Dallas Law Office in Texas. All from the same Law Firm, but from different Regional Law Offices and located in different states and being paid from the part of my former employer and located in Murfreesboro, Rutherford County, Tennessee.

Only the Attorney resident in Dallas, Dallas County, Texas is one Attorney with license holder and member in good standing with the State Bar of Texas and having authorization to practice law from the Texas Board of Law Examiners and the State Bar of Texas.

This Attorney represented the Defendant as Individual in that Statutory Civil County Court at Law Number 1 in Fort Worth, Texas, and having filed on 01/05/2018 his appearance as retainer Defendant's Attorney in that Statutory Civil County Court at Law, but at the same, he has filed a Joint Motion in the civil case assigned and requesting to the Out of State Attorney from Nashville, Henderson County, Tennessee should be granted participation for admission as Pro Hac Vice Attorney in that Statutory Civil County Court at Law in Fort Worth, Texas as non-resident attorney in Texas.

His joint motion and signed electronically has been highly defective as being one Retainer Defendant's Attorney in the Record, resident in Texas and being the SPONSOR and SUPERVISOR of the Out of State Attorney as non-resident attorney in Texas.

As Plaintiff Self-Represented Litigant Pro Se, I did not contest such Joint Motion and filed by the Defendant's Attorney in the Record and being the SPONSOR and SUPERVISOR attorney in Texas and from the Out of State Attorney from Nashville, Tennessee.

On 01/11/2018, the Judge assigned to the case, erroneously granted admission as Pro Hac Vice Attorney and from the Out of State Attorney of Nashville, Tennessee and signed a proposal Order filed by the Defendant's Attorney in the record as Sponsor and Supervisor Attorney of the Out of State Attorney.

Subsequently, the Retainer Defendant's Attorney in the Record has filed a Motion to Dismiss the civil case with prejudice under the statute Texas Citizen Participation Act (TCPA) and of which has been set a hearing for the Motion to Dismiss the case on 01/19/2018.

Two days before, I filed a Motion for Continuance, and because I could attend the hearing with the Motion to Dismiss. The retainer defendant's Attorney received one copy via email message with document attached and that I was requesting a continuation and to be rescheduled the hearing for Motion to Dismiss to other day and time, but my Motion for Continuance has been only read by the Judge assigned on 01/19/2018 in the time schedule the hearing and having the Judge assigned of the case denied my motion for continuance and proceed with the hearing with the Motion to Dismiss and without have the presence of the Plaintiff and to be heard and under the Texas Constitution for Open Courts.

The Retainer Defendant Attorney argued the provisions of the old version of the statute TCPA and the judge dismissed with prejudice the civil case and without having heard the Plaintiff and before to dispose of the case. Together with the Motion to Dismiss with prejudice and granted by the judge, the retainer Defendant Attorney in the Record requested Attorneys' Fees in the amount of \$6,819.00 and of which the judge perfunctorily and in one rubber stamping decision granted the retainer's Defendant Attorney Motion for Attorney's Fees and under the old version statute TCPA.

After the disposition of the case on 01/19/2018, I filed Post Judgment Motions and contested the lack of the due process and being that the judge did not hear the Plaintiff and before to dispose of the case on 01/19/2018.

Also, I requested one hearing for Post Judgment Motions and of which has been scheduled on the last day for plenary power of the judge assigned.

On that day, I contested the lack of due process and not having the right to be heard in another day and time and before the judge to dispose of the case.

The judge denied all my Post Judgment Motions and was still told to negotiate with the Retainer Defendant's Attorney the Attorneys' Fees awarded on 01/19/2018.

In that time, I contested the lack of the due process, the amount of the Defendant's Attorneys' Fees awarded and from one Motion to Dismiss and without having heard the Plaintiff before to dispose of the case and having contested the lack of the due process under the statute TCPA.

Subsequently, I filed an appeal before the Court of Appeals for Second District at Fort Worth arguing the lack of due process, the provisions of the old version of the statute TCPA and the amount of the Defendant's Attorneys' Fees awarded.

The Panel of the COA Second District at Fort Worth affirmed the decision of the Statutory County Judge and included the Defendant's Attorneys' Fees awarded. In This Appeal in Fort Worth, Texas, the Defendant's Attorney has been the same in the lower Court.

Subsequently, I filed a petition for review before the Supreme Court of Texas and the petition has been denied, then I filed a Petition for Writ certiorari before the U. S. Supreme Court and the petition has been denied.

After has been completed all appellate stages, the Retainer Defendant's Attorney in the Record and also being the Sponsor and Supervisor of the Out of State Attorney admitted by the judge as Pro Hac Vice Attorney in that Texas proceeding, he has requested one abstract of judgment from the Tarrant County Clerk of all Statutory County Courts at Law and after having been filed one copy in the Johnson County Clerk Office and because the Plaintiff as Pro Se resides in Johnson County, Texas.

The Discovery of the Extrinsic Fraud occurred in that Statutory Tarrant County Civil County Court at Law Number 1 in Fort Worth, Tarrant County, Texas:

I did not receive one copy of this abstract of judgment and having later discovered it after a search at Tarrant County Courts Search Web Site.

Subsequently, I obtained one certified copy of the abstract of judgment, and when I paid attention that the Retainer Defendant Attorney in the Record Greg Patrick McAllister has changed the Defendant's Address from Lakeside, Tarrant County, Texas to Murfreesboro, Rutherford County, Tennessee.

This false Defendant's Address (The Defendant never has lived, being one resident and domiciled in Murfreesboro, Rutherford County, Tennessee), then I started to research more what the retainer Defendant Greg Patrick McAllister has filed in that Statutory Civil County Court at Law in the Court's Record.

Also, I learned that this kind of the civil lawsuit for personal injury for defamation must be filed in the Plaintiff's County of Residence and under the Dominion Jurisdiction of the Civil Practice Code in Texas and it means that the Statutory Tarrant County Civil County Court at Law in Fort Worth, TX does not have territorial jurisdiction to adjudicate such civil lawsuit and to have limited territorial jurisdiction boundaries and under the dominion territorial jurisdiction and this argument the Retainer Defendant Attorney in the Record Greg Patrick McAllister never has argued in that Statutory Civil County Court at Law in Fort Worth, Texas in the hearing for a Motion to Dismiss and occurred on 01/19/2018 in that Court.

After those findings, I decided to review all Texas Rules for Admission Pro Hac Vice Attorney in Texas proceedings for Texas Courts and for Texas Government Bodies.

Also, I decided to review the entire statute State Bar Act, Texas Government Code and the Unauthorized Practice of Law Statute in Texas, as well as, the Rules adopted by the Texas Board of Law Examiners in relation Attorneys from other jurisdictions and not residents in Texas, and also the disciplinary rules of professional conduct adopted by the State Bar of Texas, and for my surprise I discovered after all stages of appellate fillings terminated and with the disposition of the case that the retainer Defendant's Attorney in the Record Greg Patrick McAllister as Sponsor and Supervisor Attorney, and working in that time to the famous law firm LITTLER MENDELSON PC at Dallas Law Office in Texas has committed extrinsic fraud in that Statutory Tarrant County Civil County Court at Law Number 1 in Fort Worth, Texas and having flagrantly deceived the judge assigned of the case.

Greg Patrick McAllister as Retainer, Defendant's Attorney in the Record, Sponsor and Supervisor Attorney, He acted in flagrant collusion with the Out of State Attorney Charles Eric Stevens from the Nashville Law Office in Tennessee of LITTLER MENDELSON PC and both attorneys in flagrant defiance of the Texas Rules and that it prescribes the Admission for Pro Hac Vice Attorney in any Texas proceedings, both attorneys deceptively concealed and from the part of the judge assigned of the case, the flagrant delinquency act for non-payment of the mandatory fee as non-resident attorney in Texas to the state judicial agency of the Texas Board of Law Examiners located in Austin, Travis County, Texas, and of which it publishes and clearly in the website about the Texas Rules for Admission as Pro Hac Vice Attorney (non-resident attorney in Texas) in relation the Rule 19 and promulgated by the Supreme Court of Texas and plus the Texas Government Code for payment of the mandatory fee as non-resident attorney in Texas and to be paid BEFORE the applicant for admission as Pro Hac Vice Attorney and of which it wishes to seek participation for admission as Pro Hac Vice Attorney in any Texas proceedings in Texas Courts or Texas Government Bodies as previous authorization and being issued by the Texas Board of Law Examiners and to obtain **ELIGIBILITY** to seek participation for admission as Pro Hac Vice in one Texas proceeding and being the mandatory fee as non-resident attorney must be paid **before** to seek

participation and for **EACH CAUSE** that the applicant wishes to seek participation for admission as Pro Hac Vice Attorney in Texas Court or Texas Government Body. Such rules are very clear and clearly published via online in the Texas Board of Law Examiners.

Both attorneys deceptively concealed the non-payment of the mandatory fee as non-resident attorney to the state judicial agency of the Texas Board of Law Examiners and being that the **Out of State Attorney Charles Eric Stevens was not eligible to practice limit practice of law in that Texas proceeding as Attorney from other Jurisdiction** and having the **Out of State Attorney practiced unauthorized practice of law in that Texas proceeding** and having been assisted, aided and abetted by the Retainer Defendant's Attorney in the Record as Sponsor and Supervisor Attorney of the delinquent Out of State Attorney in that Texas proceeding.

This Extrinsic Fraud, the Plaintiff as Self-Represented Litigant Pro Se has discovered only in **January 2022** and when he has discovered that the Retainer Defendant's Attorney in the Record as Sponsor and Supervisory **did not file together with the Joint Motion with the delinquent Out of State Attorney Charles Eric Stevens, one copy of the acknowledgment letter receipt as material proof of the payment addressed to the state judicial agency of the Texas Board of Law Examiners as material proof of the ELIGIBILITY to the applicant for admission as Pro Hac Vice Attorney to seek participation for admission as Pro Hac Vice Attorney in that Texas proceeding.**

In spite of the fact that the judge assigned of the case has admitted the applicant for admission as Pro Hac Vice Attorney on 01/11/2018 in that Texas proceeding, it is clear that the admitted Pro Hac Vice Attorney participated and requested Attorney's Fees **unlawfully** and because the same admitted Pro Hac Vice Attorney by the Judge of the case assigned **was not eligible to seek participation and admission as Pro Hac Vice Attorney in that Texas proceeding and from the part of the Texas Board of Law Examiners** and whose **state judicial agency** is in charge to collect all mandatory fees for non-resident attorneys in Texas and that wish to seek participation for admission as Pro Hac Vice Attorney in one determined Texas Proceeding.

The Plaintiff as Self-Represented Litigant Pro Se, after this discovery for extrinsic fraud occurred in **January 2022**, the Plaintiff filed complaints as Complainant with the Texas Board of Law Examiners, and addressed to the Executive Director Nahdiah Hoang and responsible to issue and sign the acknowledgment letters receipt of the payment done for mandatory fee for non-resident attorneys in that Agency. Also, Plaintiff has warned the Statutory Civil County Court at Law Judge and the out of state attorney Charles Eric Stevens and is responsible by the fraud that he committed in that Texas proceeding and acting in collusion with the Attorney in the Record Greg Patrick McAllister.

In **February 2022**, the delinquent out of state attorney Charles Eric Stevens and from Nashville, Tennessee, finally admitted the fraud that he committed in that Court and having deceived the judge of the case assigned and the Texas Board of Law Examiners, the State Bar of Texas and the Unauthorized Practice of Law Committee of Texas and having decided to pay the belated mandatory fee for non-resident attorney in Texas to the state judicial agency of the Texas Board of Law Examiners in **February 2022** and after having filed one copy of the acknowledgment letter receipt issued by the Texas Board of Law Examiners as material proof of the payment done and spite of the fact that this procedure and done by the out of state attorney, it does not cure the fact of the fraud that he committed in that Texas proceeding and of which he should have paid the mandatory fee as non-resident attorney **BEFORE** to seek

participation for admission as Pro hac Vice Attorney and to the Texas Board of Law Examiners and **when the case was pending for disposition in that Court.**

His belated payment and done within **4 years and 33 days later** and **after the disposition of the case and occurred on 01/19/2018**, only has demonstrated his bad faith, dishonesty, lack of candor and the unauthorized practice of law that he has practiced in that Texas proceeding and when the case was pending for disposition and having been corroborated and flagrantly with his sponsor and supervisor Attorney resident in Texas and being the Defendant's Attorney in the Record in that Texas proceeding.

Also, the same delinquent out of state attorney Charles Eric Stevens and for 04 years and 33 days with the State Judicial Agency of the Texas Board of Law Examiners, he still has mocked the judge assigned of the case and when he finally filed in that Court's Record one copy of the acknowledgment letter receipt issued by the Texas Board of Law Examiners only in February 2022 and once that as Plaintiff Self Represented Litigant pro Se has requested for sanctions against the dishonesty, lack of candor, bad faith and unauthorized practice of law that Charles Eric Stevens has done in that Texas proceeding.

Subsequently, I filed complaints with the Unauthorized Practice of Law Committee of Texas and not only about the out of state attorney Charles Eric Stevens for his unauthorized practice of law in that Texas proceeding, but also from the Paralegal Monica M. Villegas and from LITTLER MENDELSON PC at Dallas Law office, Texas, and of which inflated in the invoice as Attorneys' Fees, two more bill and impersonating the Paralegal as "ATTY" "MMV", which means "Attorney" "Monica M. Villegas" and having committed fraud in that Court and having been covered, assisted, aided and abetted by the Retainer Defendant's Attorney in the record Greg Patrick McAllister as Sponsor and Supervisor Attorney from the delinquent out of state attorney Charles Eric Stevens and also from the Paralegal Monica M. Villegas that impersonated herself as "Attorney" in the invoice duly filed in the Court's record in that Statutory Court in Fort Worth, Texas.

For more incredible that it can appear, the regional Investigator assigned of the UPLC of Texas, subcommittee, district number 6 located in Dallas, Dallas County, Texas, James S. Robertson III has closed administratively (03) three complaints assigned and having as subject: Charles Eric Stevens and Monica M. Villegas. The Complaints investigated have not been dismissed, but having been administratively closed and only having been issued an insignificant warning and addressed to the two individuals as subject of the complaints that committed literally unauthorized practice of law in that Texas proceeding and having communicated that the Committee did not approve the acts practiced by the two individuals.

Concerning the Retainer Defendant's Attorney in the Record Greg Patrick McAllister as Sponsor and Supervisor and having been one accomplice for the fraud occurred in that Texas proceeding and having flagrantly covered, assisted, aided and abetted (02) individuals for unauthorized practice of law, Greg Patrick McAllister has fallen squarely in violation of the Disciplinary Rule of Professional Conduct, **Rule 5.05** and to have assisted (02) individuals for unauthorized practice of law in that Texas proceeding and still having provided support and requested for Attorneys' Fees and from (02) two individuals for unauthorized practice of law in that Texas proceeding.

In fact, the violation has not been under the Rule 5.05 for assistance for unauthorized practice of law in Texas, but also from the rules: 3.03(2) for lack of candor, and 8.04(a)(3) for dishonesty

in Court and being all Rules of the Texas Disciplinary Rules of Professional Conduct adopted by the State Bar of Texas and promulgated by the Supreme Court of Texas.

As Plaintiff Self Represented Litigant Pro Se, I filed one new civil lawsuit in the same Statutory Tarrant County Civil County Court at Law Number 1 in Fort Worth, Texas as Bill of Review and being one ancillary cause of action and from the related case disposed in the same Court on 01/19/2018 and because there is extrinsic fraud occurred in that Court and from the part of the two attorneys and one paralegal.

Also, I filed a complaint against the Attorney resident in Texas Greg Patrick McAllister for lack of candor towards the tribunal, bad faith, dishonesty and to have assisted two individuals for unauthorized practice of law in that Texas proceeding, and for my surprise and same having provided plenty of material evidence to the CDC regional investigator assigned, the Office of the Chief Disciplinary Counsel at Dallas Regional Office has summarily dismissed a valid grievance complaint assigned and placed in one local panel called Summary Disposition Panel (SDP) for a summary dismissal for no "*Just Cause*" found in the District Number 7 of the Grievance Committee.

One attorney located in Houston and called Robert Bennett has done a whistleblower website and criticizing the fact that the Office of Chief Disciplinary Counsel of the State Bar of Texas only act against small law firms and solo lawyers and being that he never has seen one attorney from a Big Law Firm has been sanctioned by the CDC of the State Bar of Texas.

The case mentioned above demonstrates clearly that Mr. Robert Bennett is correct in his assertion and published in one website about the lack of the accountability of the Chief Disciplinary Counsel of the State Bar of Texas and having in fact a double standard and to decide if a valid grievance complaint must proceed or must place in one perfunctory and rubber stamping local panel called "Summary Disposition Panel" (SDP) from one District Grievance Committee and having already one recommendation of the CDC's Staff for a summary dismissal of the valid grievance complaint assigned.

Moreover, the current Rule 19 for admission as Pro Hac Vice requires sworn motion filed in Court or with Government Agency, a complete list of all Texas Proceedings and of which the Applicant for Pro Hac Vice has been previously admitted in Texas and it requires one copy of the acknowledgement letter receipt issued by the Texas Board of Law Examiners as material proof of the payment done and to have eligibility to seek participation for admission as Pro Hac Vice in one determined Texas proceeding. Nothing of these requirements and promulgated by the Supreme Court of Texas has not been complied by the Attorney resident in Texas Greg Patrick McAllister and also from the Out of State Attorney Charles Eric Stevens in that Texas proceeding.

Alos, when the delinquent out of state attorney Charles Eric Stevens decided to pay belately his mandatory fee as non-resident attorney to the Texas Board of Law Examiners and within 04 years and 33 days later after the disposition date of the case, the Texas Board of Law examiners did not charge absolutely in nothing of the accrued interests for 04 years and 33 days later and after the disposition of the case.

Basically, there is no civil penalty, fine and much less accrued interests and for any delinquent out of state attorney and that came to the State of Texas to participate unlawfully and without to pay the mandatory fee as non-resident attorney in Texas to the Texas Board of Law Examiners and like has occurred in the case above cited and that Charles Eric Stevens has done the same delinquency scheme more than one time in the year of 2018.

The Bad Actors as delinquent and bad faith attorneys from Big Law Firms should not be impunity and like has occurred in the case cited above.

The Respondent's Attorney and from the Subject Attorney Resident in Texas, Greg Patrick McAllister has been Jim Burnham and from Dallas, TX and to represent the Respondent Greg Patrick McAllister in response to the Grievance Complaint assigned and who blamed about the delinquency act occurred due to the negligence and omission of the Texas Board of Law Examiners and the Judge assigned of the case.

So... and about the Candor towards Tribunal, Honesty and having to act in good faith as Lawyer?

If the Grievance Complaint Investigation and the administrative quasi-judicial adjudicatory proceeding has been done impartially and not having a double standard, then certainly would exist some kind of the sanctions and against not only with the Attorney Resident in Texas as Sponsor and Supervisor of the delinquent Out of State Attorney, but also with the delinquent Out of State Attorney and having as jurisdiction the Court that happened the fraud.

However, nothing has occurred with the two attorneys that flagrantly violated the Texas Rules of the Lawyer for Discipline of the Professional Conduct, Texas Rules for Admission Pro hac Vice , Texas Government Code, and the statute State Bar Act.

THE TEXAS RULES EXIST, BUT ARE NOT ENFORCED.

Sincerely,

Adriano K. Budri
Complainant/ Private Citizen / Constituent

Attached one copy of the response letter pages number 1 and 4 and having been signed and dated June 13, 2022 by the Attorney Jim Burnham as Respondent's Attorney for Greg Patrick McAllister of the Grievance Complaint Number assigned: 202202032 – Adriano Kruel Budri – Greg Patrick McAllister, and addressed to the Regional Senior Investigator Domingo Elizondo and assigned of the Dallas Regional Office of the Chief Disciplinary Counsel of the State Bar of Texas located in Dallas, Dallas County, Texas, and sent via email messages with documents attached to the following email addresses: dalcrcresponses@texasbar.com and domingo.elizondo@texasbar.com.

The sender is from the Law Offices of Jim Burnham located at Expressway Tower, 6116 North Central Expressway, Suite 515, Dallas, Dallas County, Texas 75206, Phone (214) 750-6616 and Fax (214) 750-6649, website: www.jburnhamlaw.com criminal Defense Attorney for Federal & State Cases.

As important matter, it is the fact that the Respondent's Attorney Jim Burnham has admitted the fraud and delinquency perpetrated by his client Greg Patrick McAllister as Attorney on Record of the case number: 2017-007958-1 and concerning the delinquency act perpetrated from the part of the out of state attorney Charles Eric Stevens, and not having been paid previously the mandatory fee for non-resident attorney in Texas to the state judicial agency of the Texas Board of Law Examiners in flagrant violation of the statute State Bar Act, Rule19(c)(e)(f) for the Rules Governing Admission to the Bar of Texas and Texas Government Code Section 82.001 for payment of the mandatory fee as non-resident attorney with the Texas Board of Law Examiners and not having showed and filed one copy of the acknowledgment receipt letter issued by the Texas Board of Law Examiners as material proof with the joint motion filed on 01/05/2018 and

of which both attorneys stated that they are familiar with the Texas rules promulgated by the Supreme Court of Texas, statute State Bar Act, and Texas Government Code for admission of the Pro Hac Vice attorneys in Texas proceedings.

On page number 4, the Respondent's Attorney Jim Burnham has written one ridiculous and childish excuse and to allege the flagrant delinquency and fraud committed and from the part of the (02) two attorneys and that acted in collusion in one clear fraudulent and delinquent act against the state judicial agency of the Texas Board of Law Examiners and the Texas Rules promulgated by the Supreme Court of Texas, as well as, the statute State Bar Act.

Basically, the Respondent's Attorney Jim Burnham blamed in his response's letter that the fraud and the delinquency occurred and from the part of the (02) Attorneys is "*culpable*" the Board of Law Examiners for negligence and omission as State Judicial Agency appointed by the Supreme Court of Texas and having written:

... "The Board of Law Examiners, the body to whom the Pro Hac Vice Fee in question ought to have been paid, neither informed Mr. McAllister and Mr. Stevens of the fee, nor made any effort to collect it. Because no one ever informed Mr. McAllister or Mr. Stevens, they were not aware that any fee was owed."...

There is one specific webpage and dedicated exclusively for payment of the mandatory fee for non-resident attorney in Texas as Pro Hac Vice and explaining clearly about the requirements and prescribed by the Rule19(c) for the Rules Governing Admission to the Bar of Texas and Texas Government Code Section 82.001for payment of the mandatory fee for non-resident attorneys in Texas in the website of the Texas Board of Law Examiners.

Also, and again, in the joint motion filed by the attorney Greg Patrick McAllister as attorney on record, sponsor and supervisory attorney of the out of state attorney Charles Eric Stevens, he has written and clearly about the Rule 19 for the Rules Governing Admission to the Bar of Texas and having signed such joint motion and filed on 01/05/2018 at Statutory Tarrant County Civil County Court at Law Number 1 in the County Seat of Fort Worth, County of Tarrant, State of Texas.

Also, the executive director Ms. Nahdiah Hoang of the Board of Law Examiners has provided one copy of the other Texas proceeding and of which the attorney Greg Patrick McAllister as attorney on record, sponsor and supervisory of the out of state attorney Charles Eric Stevens has been admitted in one Justice Court and located in Dallas County JP1-1, in Dallas, Dallas County, Texas in September of 2017, and having been one case number assigned: Case No. JS-1700481H in that Texas Court.

Also, the Respondent's Attorney Jim Burnham wrote in the second paragraph on the page number 4, the following text.

..."Furthermore, the Tarrant County Judge granted Mr. Stevens' Motion for Pro Hac Vice. See: Exhibit A. If Mr. Stevens could not legally practice law until the fee was paid, the Judge should not have granted the motion with the fee still unpaid. However, the Judge did grant the Pro Hac Vice motion. The moment the Judge signed the motion, Mr. Stevens became authorized to practice law in the State of Texas."...

This argument is completely misplaced and misleading. First of all, the Supreme Court of Texas promulgated the Rule19(c) of the Rules Governing Admission to the Bar of Texas as part of the implementation of the statute State Bar Act for limit practice of law for attorneys from others jurisdictions (out of state attorneys) in the State of Texas and also having been prescribed in the Texas Government Code Section 82.001for payment of the mandatory fee for non-resident attorneys in Texas for each cause assigned.

Any Out of State Attorney only can legally practice law in the State of Texas as not being licensed and not being member of the State Bar of Texas, if he pays previously the mandatory fee as non-resident attorney in Texas with the state judicial agency of the Texas Board of Law Examiners and before to seek participation for admission as Pro Hac Vice Attorney in one determined Texas proceeding and for each cause of which the applicant for admission as Pro Hac Vice Attorney is seeking participation for admission and for limit practice of law in Texas Court or Texas Government Body.

Charles Eric Stevens as out of state attorney and Greg Patrick McAllister as attorney resident in Texas as sponsor and supervisor attorney on record, both attorneys have paid and previously one mandatory fee as non-resident attorney and from other Texas proceeding in September, 2017 at Dallas County JP1-1 of the case number: JS-1700481H with the Texas Board of Law Examiners and having the Board issued one acknowledgment letter receipt to Charles Eric Stevens as applicant for Pro Hac Vice Attorney and giving authorization to seek participation for admission as Pro Hac Vice Attorney in that Justice Court located in Dallas, Dallas County, Texas.

It is clear that both attorneys acted in bad faith, dishonesty and lack of candor with the tribunal and having Greg Patrick McAllister assisted one individual for unauthorized practice of law in the Texas proceeding and being the delinquent out of state attorney Charles Eric Stevens of the case number assigned: 2017-007958-1.

He deliberately did not pay the mandatory fee as non-resident attorney and previously to seek participation for admission as Pro Hac Vice attorney at Statutory Tarrant County Civil County Court at Law Number 1 in Fort Worth, Texas and having the accomplice and collusion with the attorney on record as sponsor and supervisory attorney resident in Texas, Greg Patrick McAllister.

The only truly statement and written by the Respondent's Attorney Jim Burnham has been for the fact that the Judge assigned of the Case Assigned (Donald R. Pierson II as Elected Judicial Officer in that Statutory Tarrant County Civil County Court at Law Number 1) ...*"the Judge should not have granted the motion with the fee still unpaid."*...

Also, the Respondent's Attorney Jim Burnham has argued the following text: ... *"However, the Judge did grant the Pro Hac Vice motion. The moment the Judge signed the motion, Mr. Stevens became authorized to practice law in the State of Texas."*...

This text is completely misleading. First of all, the Judge granted admission and from one defective Pro Hac Vice Motion and flagrantly missing one copy of the acknowledgment letter receipt issued by the Texas Board of Law Examiners for mandatory fee as non-resident attorney paid and PREVIOUSLY to seek participation for admission as Pro Hac Vice Attorney in that specific case assigned.

The out of state attorney did not receive a previous temporary authorization and to practice a limit practice of law in that Texas proceeding and in compliance with the requirement of the Texas Rule19(c) of the Rules Governing Admission to the Bar of Texas as part of the implementation of the statute State Bar Act for limit practice of law for attorneys from others jurisdictions (out of state attorneys) in the State of Texas and also having been prescribed in the Texas Government Code Section 82.001for payment of the mandatory fee for non-resident attorneys in Texas and for each cause assigned and when the case is pending for disposition.

The authorization given by the Judge in that Court is with limited jurisdiction and it does not supersede the requirements promulgated by the Supreme Court of Texas for admission as Pro Hac Vice Attorneys in Texas and needing previously of the authorization issued by the state judicial agency of the Texas Board of Law Examiners and for the applicant seeking participation for admission as Pro Hac Vice Attorney in one determined Texas proceeding in Texas Court or Texas Government Body. Also, the same Respondent's Attorney Jim Burnham wrote: ...” *The moment the Judge signed the motion, Mr. Stevens became authorized to practice law in the State of Texas*”...

This text is totally misleading. The Texas Rules for admission as Pro Hac Vice Attorneys in Texas is clearly described that the applicant for admission as Pro Hac Vice Attorney and for any Texas proceeding in Texas Court or Texas Government must pay previously the mandatory fee for non-resident attorney to the Texas Board of Law Examiners and having to submit for one online application form and seeking participation for admission as Pro Hac Vice Attorney in one specific Texas Proceeding and to be eligible to seek participation for admission as Pro Hac Vice Attorney in one specific Texas proceeding in Texas Court or Texas Government Body.

When the Judge granted admission as Pro Hac Vice Attorney to the delinquent out of state attorney, the out of state attorney Charles Eric Stevens was not eligible to practice temporarily limit practice of law in that Texas proceeding and he was unauthorized to practice law in Texas by the state judicial agency of the Texas Board of Law Examiners and being in flagrant violation of the Texas Rules for admission as Pro Hac Vice Attorneys in Texas. In other words, it was one unlawful authorization and to practice limit practice of law in that Texas proceeding. The Judge taken an Oath and sworn or affirmed that he abides with the United States Laws and with the State Laws in the State of Texas and the statute State Bar Act is part of this compliance of the State Laws in Texas.

Basically, the judge assigned Donald R. Pierson II failed to comply with the Texas Rule 19(c) of the Rules Governing Admission to the Bar of Texas as part of the implementation of the statute State Bar Act for limit practice of law for attorneys from others jurisdictions (out of state attorneys) in the State of Texas, as well as, with the Texas Government Code Section 82.001 for payment of the mandatory fee for non-resident attorneys in Texas and for each cause assigned and when the case is pending for disposition.

It is very important to make emphasis again what the Respondent's Attorney Jim Burnham wrote about the incompetence and omission of the judge assigned of the case. ...*"the Judge should not have granted the motion with the fee still unpaid."*...

However, the attorneys Greg Patrick McAllister as attorney resident in Texas, sponsor and supervisory of the delinquent out of state attorney Charles Eric Stevens in that specific Texas proceeding, both attorneys sworn and taken an Oath as Lawyers and to be candor with the Court and to keep the integrity of the judicial system and not act with dishonesty and bad faith.

However, it is clearly what happened with that Texas proceeding at Statutory Tarrant County Civil County Court at Law Number 1 located in the County Seat of Fort Worth, County of Tarrant in the State of Texas and whose jurisdiction of the Grievance Committee is from the District Number 7 of the State Bar of Texas.

Even the Respondent's Attorney Jim Burnham of the Attorney Greg Patrick McAllister recognized the fraud in that Court and the delinquency committed and deceptively concealed and from the part of the (02) two attorneys, respectively, Greg Patrick McAllister and Charles Eric Stevens, both acted in bad faith, dishonesty, lack of candor with that Court and with unauthorized practice of law and in flagrant violation of the Texas Rules for admission as Pro Hac Vice Attorney in Texas and including the request as "Attorney" "Fees" and from the part of one Paralegal and who is not an Attorney and having impersonated as "ATTY" "MMV" in the invoice showed and filed by the Attorney on Record Greg Patrick McAllister, who assisted (02) two individuals for unauthorized practice of law in Texas and still having requested Attorneys' Fees and awarded by the Judge Donald R. Pierson II in that Texas proceeding.

Absolutely no integrity in that Texas proceeding assigned of the case number: 2017-007958-1.

Frederick Ross Fischer, as Ex-Officio, General Counsel of the Board of Directors of the State Bar of Texas, Law Firm Ross Fischer, 430 Old Fitzhugh Road, Apt Number 7, Dripping Springs, Texas 78620-3854, State Bar of Texas, P. O. Box 12487, Austin, Texas 78711-2487, 1414 Colorado Street, Austin, TX 78701. Email address: [REDACTED] and email address: ross.fischer@texasbar.com. (Sent via email) has been duly notified, as well as, the same Statutory Civil County Court at Law Judge Donald R. Pierson II, the Chief Disciplinary Counsel Seana Beckerman Willing and that committed prevarication of the disciplinary rules of

professional conduct and alleging dismissing a valid grievance complaint for “*No Just Cause*” found...

The Texas Rule 19(c) of the Rules Governing Admission to the Bar of Texas is part of the implementation of the statute State Bar Act for limit practice of law for attorneys from other jurisdictions (out of state attorneys) in the State of Texas. It is a job of the Chief Disciplinary Counsel and with her annual salary at approximately \$200,000.00 and being paid by the members of the State Bar of Texas to enforce disciplinary rules of professional conduct and when the attorney acts without candor towards the tribunal, dishonesty and still assisting individuals for unauthorized practice of law in Texas and requesting inappropriately Attorney's Fees and from the part of the individuals unauthorized to practice law in Texas.

A lot of the copies of material evidence has been provided to the regional senior investigator Domingo Elizondo and allotted at Dallas Regional Office of the Chief Disciplinary Counsel and showing clear “*Just Cause*” found and everything clearly docketed in the Court's record at Statutory Tarrant County Civil County Court at Law Number 1 in Fort Worth, Tarrant County, Texas in the District Number 7 of the Grievance Committee of the State Bar of Texas.

With a difference of only 01 month and 02 days, the same **District Number 7 of the Grievance Committee** has adjudicated administratively (02) two grievance complaints and having basically the same violation of the Disciplinary Rules of Professional Conduct for one lawyer having assisted one individual for unauthorized practice of law in Texas.

See: **DISTRICT Number 7 – Grievance Committee**: On 08/04/2022, Luvenia Evett Sanchez as Assistant Disciplinary Counsel has written a letter on behalf of the Office of the Chief Disciplinary Counsel of the State Bar of Texas and from the Regional Dallas CDC Office and

communicating by written letter that one investigation has been completed about the Grievance Complaint assigned with the number: 202202032 and that the Chief Disciplinary Counsel has determined that there is “*no just cause*” to believe that the subject lawyer has committed professional misconduct and having presented the Chief Disciplinary Counsel’s determination for one Local Summary Disposition Panel of the District Number 7 Grievance Committee.

The letter informed that the Panel’s Members have voted to dismiss the Grievance Complaint after reviewing all the evidence submitted and obtained during the investigation. The Grievance Complaint Number: 202202032 has been about the violation of the Rule 5.05(b): A lawyer shall not: (b) Assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

See: **DISTRICT Number: 7 - Grievance Committee: On 09/06/2022, Halla, Michael B.: #24010082. Date: 9/6/2022** - Agreed Public Reprimand. On September 6, 2022, Michael B. Halla [#24010082], 52, of Ferris, agreed to a public reprimand. **An investigatory panel of the District 7 Grievance Committee** found that Halla was hired on or about June 22, 2021 to represent Complainant in a personal injury matter involving an auto accident. During the legal representation, Halla shared or promised to share legal fees with a non-lawyer. During the representation, **Halla assisted a person who is not a member of the State Bar in the performance of activity that constitutes the unauthorized practice of law. Halla violated Rules 5.04(a) and 5.05(b).** He was ordered to pay attorneys' fees and direct expenses in the sum of \$500.00.

It is clear the double standard used by the District Number 7 of the Grievance Committee for Grievance Complaints and to be “*selected*” grievance complaints investigated and to be placed in one perfunctory and rubber stamping local panel called Summary Disposition Panel (SDP) of the District Number 7 of the Grievance Committee and for automatic dismissals under the recommendations issued by the CDC Staff and from the Dallas Regional Office of CDC, and under the overall supervision of the Regional Manager Attorney Tonya Harlan and with the investigation assigned and “*concluded*” by the senior regional investigator Domingo Elizondo in that Regional Office.

According with the last (02) two fiscal years report of the State Bar of Texas, **the District Number 7 of the Grievance Committee** has perfunctorily dismissed all Grievance Complaints placed by the CDC for recommendations of summary dismissals for no “*Just Cause*” found and with the local Panel SDP.

The Grievance Complaint assigned with the number: 202202032 has showed clear material evidence that the attorney Greg Patrick McAllister has acted in bad faith, lack of candor towards the tribunal, dishonesty and assisted (02) two individuals for unauthorized practice of law and still having requested Attorney’s Fees and from the part of the (02) two individuals for unauthorized practice of law in that Texas proceeding.

THE LAW OFFICES OF
JIM BURNHAM

WWW.JBURNHAMLAW.COM
CRIMINAL DEFENSE ATTORNEY
FEDERAL & STATE CASES

EXPRESSWAY TOWER
6116 NORTH CENTRAL EXPRESSWAY
SUITE 515
DALLAS, TEXAS 75206

(214) 750-6616
FAX: (214) 750-6649

June 13, 2022

Via Email: dalcrcresponses@texasbar.com

Via Email: domingo.elizondo@texasbar.com

Via Mail: Adriano Budri, 5029 County Road 605, Burleson, TX 76208

Mr. Domingo Elizondo
Senior Investigator
Office of the Chief Disciplinary Counsel
14651 Dallas Parkway, Suite 925
Dallas, TX 75254

Re: 202202032—Adriano Krue Budri—Greg McAllister

Mr. Elizondo:



- The motion for pro hac vice was filed on 01/05/2018 and was granted by the Judge on 01/11/2018. See Exhibit A.



[REDACTED]

The Board of Law Examiners, the body to whom the pro hac vice fee in question ought to have been paid, neither informed Mr. McAllister and Mr. Stevens of the fee, nor made any effort to collect it. Because no one ever informed Mr. McAllister or Mr. Stevens, they were not aware that any fee was owed. [REDACTED]

Furthermore, the Tarrant County Judge granted Mr. Stevens' motion for pro hac vice. See **Exhibit A**. If Mr. Stevens could not legally practice law until the fee was paid, the Judge should not have granted the motion with the fee still unpaid. However, **the Judge did grant the pro hac vice motion. The moment the Judge signed the motion, Mr. Stevens became authorized to practice law in the state of Texas.**

[REDACTED]

[REDACTED]

[REDACTED]

Very truly yours,



s/ Jim Burnham
Attorney for Greg McAllister

[REDACTED]

From: [Adriano Budri](#)
To: [Andrea Low](#); [cdrr](#); [Nahdiah Hoang](#); [REDACTED]
Subject: What the Commission for Disciplinary Rules and Referenda (CDRR) should analyze.
Date: Monday, April 3, 2023 2:47:47 PM
Attachments: [Complaintlettersreceipt.pdf](#)

Re: What the Commission for Disciplinary Rules and Referenda (CDRR) should analyze

The CDRR should analyze what kind of the rule should be created and for the Chief Disciplinary Counsel to be really **accountable** about her acts perpetrated in her Office as official Capacity, as well as her subordinated employees and scattered in three regional offices of CDC.

Actually is the Commission for Lawyer Discipline and that is in charge to supervise the accountability of the CDC, but at the present moment, the Chair of the CFLD has not done absolutely nothing.

Attached copies of the Complaint filed with the Board of Directors and the Commission for Lawyer Discipline of the State Bar of Texas and whose sections of the State Bar of Texas are responsible to hire the Chief Disciplinary Counsel as at will employment.

STATE BAR OF TEXAS

000042



Roberto Ramirez
Chair, Commission for Lawyer Discipline

February 7, 2023

Adriano K. Budri
5029 County Road 605
Burieson, TX 76028-1177

Re: Correspondence dated 1/23/2023

Dear Mr. Budri:

This letter will acknowledge receipt of your correspondence dated 1/23/2023. In the context of Rule 5.03 of the Texas Rules of Disciplinary Procedure, The Commission for Lawyer Discipline is in the process of reviewing information set forth in your correspondence.

Thank you for reaching out to the Commission.

Sincerely,

A handwritten signature in black ink, appearing to be "Roberto Ramirez", with a stylized flourish at the end.

Roberto Ramirez
Chair, Commission for Lawyer Discipline

STATE BAR OF TEXAS

Office of Legal Counsel



P.O. Box 12487
Austin, TX 78711
FAX: (512) 427-4230

March 1, 2023

Mr. Adriano Budri
5029 County Road 605
Burleson, Texas 76028

RE: Your Complaints

Dear Mr. Budri:

On February 14, 2023, the State Bar of Texas Office of Legal Counsel received your complaint dated January 16, 2023, which states that it is related to "Seana Beckerman Willing, Tonya Harlan, Domingo Elizondo, and Luvenia Evett Sanchez, all State Bar staff members allotted in the Office of the Chief Disciplinary Counsel of the State Bar of Texas."

On February 27, 2023, our office also received your letter dated February 20, 2023, regarding "Written Complaint Form pursuant to State Bar Act Section 81.036." Our office also received your February 20, 2023, emails regarding the same subject.

The Commission for Lawyer Discipline provides oversight to the Chief Disciplinary Counsel and administers the attorney discipline system.

The Ombudsman for the Attorney Discipline System is charged, in pertinent part, with reviewing grievances to determine whether proper procedures were followed, receiving complaints about the attorney discipline system, and receiving and investigating complaints on violations of the system's procedural rules. *See* Tex. Gov't Code § 81.0883.

Additional information about the Ombudsman for the Attorney Discipline System, including contact information, is available online at:

<https://www.txcba.org/organizations-bar-education/ombudsman-for-attorney-discipline>

You can contact the Ombudsman for the Attorney Discipline System by email at stephanie.lowe@txsbar.com or by phone at 1-844-527-0382 (toll free).

Pursuant to the enclosed Complaint Process, this concludes the Office of Legal Counsel's review of these complaints.

Sincerely,

Office of Legal Counsel

Enclosure

STATE BAR OF TEXAS



Roberto Ramirez
Chair, Commission for Lawyer Discipline

March 15, 2023

Adriano K. Budri
5029 County Road 605
Burleson, TX 76028-1177

Re: Correspondence dated 1/23/2023

Dear Mr. Budri.

Consistent with my letter to you dated February 7, 2023, in the context of Rule 5.03 of the Texas Rules of Disciplinary Procedure, please be advised that the Texas Commission for Lawyer Discipline continues to review information set forth in your various correspondence.

Thank you for reaching out to the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Roberto Ramirez", with a stylized flourish at the end.

Roberto Ramirez
Chair, Commission for Lawyer Discipline

From: [Briana Stone](#)
To: [cdrr](#)
Cc: [Chris Ritter](#); [Lora Livingston](#)
Subject: RE: Public Hearing Reminder - Proposed Disciplinary Rule Changes
Date: Tuesday, April 4, 2023 11:04:48 AM

Hello. Looking over the proposed 5.05, I was wondering if you think the amendments will cause any problems for lawyers practicing under [Gov. Code 81.053\(a\)](#) or [Article XIII of the State Bar Rules](#)? If so, I suggest adding language to clarify that there is an exception for them.

Let me know if you have any questions or if I can assist in any way. The Legal Access Division administers the NOVA Program, and I worked on the enabling legislation and rule and the initial implementation of the program's current iteration.

Thanks,

Briana Stone, Civil Justice Attorney (she/her)
 Texas Access to Justice Commission & SBOT Legal Access Division
 1414 Colorado | Austin, Texas 78701 | 512.427.1857 | [REDACTED]
Increasing Access to Justice for Low-Income Texans

From: State Bar of Texas - CDrr <cdrr@texasbar.com>
Sent: Tuesday, April 4, 2023 10:04 AM
To: Briana Stone <Briana.Stone@TEXASBAR.COM>
Subject: Public Hearing Reminder - Proposed Disciplinary Rule Changes

State Bar of Texas



Public Hearing Reminder

April 12 Public Hearing on Proposed Rules 1.08 (Conflict of Interest: Prohibited Transactions), 3.09 (Special Responsibilities of a Prosecutor), 5.01 (Responsibilities of a Partner or Supervisory Lawyer), 5.05 (Unauthorized Practice of Law; Remote

Practice of Law), 8.05 (Jurisdiction), TDRPC

The Committee on Disciplinary Rules and Referenda published [Proposed Rule 3.09 \(Special Responsibilities of a Prosecutor\)](#) of the Texas Disciplinary Rules of Professional Conduct in the January issue of the Texas Bar Journal and the January 13 issue of the Texas Register. The Committee on Disciplinary Rules and Referenda published [Proposed Rules 1.08 \(Conflict of Interest: Prohibited Transactions\)](#), [5.01 \(Responsibilities of a Partner or Supervisory Lawyer\)](#), [5.05 \(Unauthorized Practice of Law; Remote Practice of Law\)](#), and [8.05 \(Jurisdiction\)](#) of the Texas Disciplinary Rules of Professional Conduct in the March issue of the Texas Bar Journal and the March 3 issue of the Texas Register.

The Committee will hold a public hearing on Proposed Rules 1.08, 3.09, 5.01, 5.05, and 8.05 by teleconference at 10 a.m. CDT on April 12, 2023. For teleconference participation information, please go to texasbar.com/cdrr/participate, where an agenda with a Zoom link will be posted before the meeting. If you plan to address the Committee at the public hearing, it is requested that you email cdrr@texasbar.com in advance of the hearing stating on which rule(s) you will comment.

The Committee will continue to accept comments concerning Proposed Rules 1.08, 3.09, 5.01, 5.05, and 8.05 through April 13, 2023. Comments can be submitted [here](#), or by email to cdrr@texasbar.com.

Additional Information

The Committee is responsible for overseeing the initial process for proposing a change or addition to the disciplinary rules (Gov't Code § 81.0873). For more information, go to texasbar.com/cdrr.

To subscribe to email updates, including notices of public hearings and published rules for comment, click [here](#).

Committee on Disciplinary Rules and Referenda

State Bar of Texas | 1414 Colorado | Austin, Texas 78701 | 800.204.2222

[Unsubscribe](#)



From: [Lora Livingston](#)
To: [Briana Stone](#); [cdrr](#)
Cc: [Chris Ritter](#)
Subject: Re: Public Hearing Reminder - Proposed Disciplinary Rule Changes
Date: Tuesday, April 4, 2023 11:07:07 AM

Just made it to Waco. I'll take a look once I make it home tonight. Thanks for the heads up.

Sent from my T-Mobile 5G Device
Get [Outlook for Android](#)

From: Briana Stone <Briana.Stone@TEXASBAR.COM>
Sent: Tuesday, April 4, 2023 11:04:46 AM
To: [cdrr](#) <[cdrr@TEXASBAR.COM](#)>
Cc: Chris Ritter <[Chris.Ritter@TEXASBAR.COM](#)>; Lora Livingston [REDACTED]
Subject: RE: Public Hearing Reminder - Proposed Disciplinary Rule Changes


Hello. Looking over the proposed 5.05, I was wondering if you think the amendments will cause any problems for lawyers practicing under [Gov. Code 81.053\(a\)](#) or [Article XIII of the State Bar Rules](#)? If so, I suggest adding language to clarify that there is an exception for them.

Let me know if you have any questions or if I can assist in any way. The Legal Access Division administers the NOVA Program, and I worked on the enabling legislation and rule and the initial implementation of the program's current iteration.

Thanks,
Briana Stone, Civil Justice Attorney (she/her)
Texas Access to Justice Commission & SBOT Legal Access Division
1414 Colorado | Austin, Texas 78701 | 512.427.1857 | [REDACTED]
Increasing Access to Justice for Low-Income Texans

From: State Bar of Texas - CDRR <[cdrr@texasbar.com](#)>
Sent: Tuesday, April 4, 2023 10:04 AM
To: Briana Stone <Briana.Stone@TEXASBAR.COM>
Subject: Public Hearing Reminder - Proposed Disciplinary Rule Changes

State Bar of Texas



Public Hearing Reminder

April 12 Public Hearing on Proposed Rules 1.08 (Conflict of Interest: Prohibited Transactions), 3.09 (Special Responsibilities of a Prosecutor), 5.01 (Responsibilities of a Partner or Supervisory Lawyer), 5.05 (Unauthorized Practice of Law; Remote Practice of Law), 8.05 (Jurisdiction), TDRPC

The Committee on Disciplinary Rules and Referenda published [Proposed Rule 3.09 \(Special Responsibilities of a Prosecutor\)](#) of the Texas Disciplinary Rules of Professional Conduct in the January issue of the Texas Bar Journal and the January 13 issue of the Texas Register. The Committee on Disciplinary Rules and Referenda published [Proposed Rules 1.08 \(Conflict of Interest: Prohibited Transactions\)](#), [5.01 \(Responsibilities of a Partner or Supervisory Lawyer\)](#), [5.05 \(Unauthorized Practice of Law; Remote Practice of Law\)](#), and [8.05 \(Jurisdiction\)](#) of the Texas Disciplinary Rules of Professional Conduct in the March issue of the Texas Bar Journal and the March 3 issue of the Texas Register.

The Committee will hold a public hearing on Proposed Rules 1.08, 3.09, 5.01, 5.05, and 8.05 by teleconference at 10 a.m. CDT on April 12, 2023. For teleconference participation information, please go to texasbar.com/cdrr/participate, where an agenda with a Zoom link will be posted before the meeting. If you plan to address the Committee at the public hearing, it is requested that you email cdrr@texasbar.com in advance of the hearing stating on which rule(s) you will comment.

The Committee will continue to accept comments concerning Proposed Rules 1.08, 3.09, 5.01, 5.05, and 8.05 through April 13, 2023. Comments can be submitted [here](#), or by email to cdrr@texasbar.com.

Additional Information

The Committee is responsible for overseeing the initial process for proposing a change or addition to the disciplinary rules (Gov't Code § 81.0873). For more information, go to texasbar.com/cdrr.

To subscribe to email updates, including notices of public hearings and published rules for comment, click [here](#).

Committee on Disciplinary Rules and Referenda

State Bar of Texas | 1414 Colorado | Austin, Texas 78701 | 800.204.2222

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From: [Mary Jo Cantu](#)
To: [cdrr](#)
Subject: April 12 Hearing
Date: Wednesday, April 5, 2023 4:34:21 PM

Dear Sir or Madam, I plan to attend the April 12 meeting regarding proposed changes to the DR's, and may want to offer comments regarding the draft of Rule 5.05 regarding the Unauthorized Practice of Law. I am a member of the State Committee of the Unauthorized Practice of Law Committee. Thank you for your consideration.

Mary Jo Cantu
Counsel
Bressler, Amery & Ross, P.C.
713-403-6407

From: Christopher Lowman [REDACTED]
Sent: Friday, April 7, 2023 2:39 PM
To: Lewis Kinard [REDACTED]
Cc: Leland De La Garza [REDACTED]
Subject: Proposed Changes to Rule 5.05

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Lewis,

It was a pleasure speaking with you yesterday. As we discussed, attached are comments from the Texas Unauthorized Practice of Law Committee regarding proposed changes to Rule 5.05. Leland de la Garza and I plan to attend the public hearing via teleconference next Wednesday to answer any questions you or your committee members may have regarding our comments.

In the meantime, if you have any questions or concerns please let me know.

Best regards,

Chris Lowman

On Wed, Apr 5, 2023 at 5:22 PM Lewis Kinard [REDACTED] wrote:

Yes. 3 p.m. works well.

Please call me on my mobile phone at 972-249-5351.

Look forward to talking with you,

|

**Lewis Kinard**

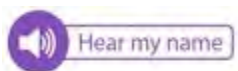
EVP, General Counsel, Assistant Corporate Secretary,
Chief Ethics & Compliance Officer

American Heart Association

[7272 Greenville Ave., Dallas TX 75231](#)

O 214.706.1246

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From: Christopher Lowman [REDACTED]
Sent: Wednesday, April 5, 2023 5:20 PM
To: Lewis Kinard [REDACTED]
Subject: RE: UPL

*** **CAUTION:** This email originated from outside of the **American Heart Association**. Do **not** click links or open attachments unless you recognize the sender and know the content is safe. ***

Lewis,

Sure, that would be great. Can I give you a call around 3?

Chris

Christopher J. Lowman

The Lowman Law Firm

America Tower

[2929 Allen Parkway, Suite 1600](#)

[Houston, Texas 77019](#)

Telephone: (713) 752-0777

Facsimile: (713) 752-0778

www.lowmanlaw.com

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From: Lewis Kinard [mailto:[REDACTED]]

Sent: Wednesday, April 05, 2023 5:16 PM

To: [REDACTED]; [REDACTED]

Subject: UPL

Chris,

Thanks for reaching out. I was out of the office and am just catching up. Do you have time tomorrow afternoon (4/6) to talk by phone?

|

Lewis Kinard

EVP, General Counsel, Assistant Corporate Secretary,
Chief Ethics & Compliance Officer

American Heart Association

[7272 Greenville Ave., Dallas TX 75231](#)

O 214.706.1246

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From: [Christopher Lowman](#)
To: [cdrr](#)
Subject: Comments regarding Proposed Rule 5.05
Date: Monday, April 10, 2023 2:34:11 PM
Attachments: [2023-04-07 UPLC Letter re Rule 5.05.pdf](#)
[UPLC Proposed Rule 5.05 - Redline Version.pdf](#)
[UPLC Proposed Rule 5.05 - Clean Version.pdf](#)
[ABA Model Rule 5.05.pdf](#)

On behalf of the Texas Unauthorized Practice of Law Committee, I submit the attached comments regarding Proposed Rule 5.05 pertaining to the unauthorized practice of law and the remote practice of law.

I plan to address the Committee at the public hearing via teleconference this Wednesday at 10 a.m. on Proposed Rule 5.05.

Very truly yours,

Christopher J. Lowman

The Lowman Law Firm

America Tower

2929 Allen Parkway, Suite 1600

Houston, Texas 77019

Telephone: (713) 752-0777

Facsimile: (713) 752-0778

www.lowmanlaw.com

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THE UNAUTHORIZED PRACTICE OF LAW COMMITTEE
APPOINTED BY THE SUPREME COURT OF TEXAS

April 7, 2023

VIA EMAIL (cdrr@texasbar.com)

State Bar of Texas
Committee on Disciplinary Rules and Referenda
Attn: M. Lewis Kinard, Chair

Re: Comment on Proposed Revisions to Rule 5.05 of the Texas Disciplinary
Rules of Professional Conduct

Dear Mr. Kinard:

We write on behalf of the Texas Supreme Court's Unauthorized Practice of Law Committee ("UPL Committee"), of which we are chair and immediate past chair, to provide comment on proposed revisions to Rule 5.05 of the Texas Disciplinary Rules of Professional Conduct.

The UPL Committee is a judicial agency whose members are appointed by the Texas Supreme Court. *See* Tex. Gov't Code § 81.103. The UPL Committee is charged by law with keeping the Texas Supreme Court and the State Bar informed with respect to the unauthorized practice of law and eliminating the unauthorized practice of law by appropriate actions, including filing lawsuits in the name of the committee. *See* Tex. Gov't Code § 81.104.

Rule 5.05 addresses the unauthorized practice of law. As a result, the UPL Committee is keenly interested in the rule and any changes to the rule since the UPL Committee is the agency primarily addressing the unauthorized practice of law on a day-to-day basis. Rule 5.05, as currently written, does not address a number of issues that the UPL Committee deals with frequently, including in-house counsel who are not licensed in Texas practicing law in Texas, temporary practice of law in Texas in the course of arbitrations and mediations, and temporary practice of law in Texas in furtherance of a law practice in another state in which the attorney is admitted to practice law. Some of these issues have been addressed in the model rule, 5.5, drafted by the American Bar Association ("ABA"). However, the ABA model rule has not been adopted in Texas. Therefore, the UPL Committee welcomes revisions that address these issues.

Having reviewed the proposed revisions to Rule 5.05, we have concerns about some of the language used in the revisions and the fact that the revisions do not address temporary practice in Texas by attorneys not admitted to practice law in Texas in the course of arbitrations and mediations. Our concerns are discussed below and we request that the Committee on Disciplinary Rules and Referenda give due consideration to our comments.

1. The revisions do not address temporary practice through arbitrations and mediations.

We raise this issue first because the UPL Committee frequently receives calls from attorneys who wish to participate in an arbitration or mediation in Texas, but who are not admitted to practice law in Texas but are admitted to practice law in another state. The concern is acute because a lawyer who commits the unauthorized practice of law in another state is subject to discipline in the lawyer's home state. *See, e.g.,* DR 5.05 (existing rule). Furthermore, a lawyer who commits the unauthorized practice of law could face a forfeiture of the lawyer's fees. *See, e.g., Birbrower, Montalbano, Condon & Frank v. Superior Court*, 949 P.2d 1 (Cal. 1998) (held that New York lawyer who was not licensed to practice law in California was not entitled to recover fees for services provided in California in the course of an arbitration proceeding).

The ABA Model Rule 5.5 addresses this issue by providing:

- (c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

...

- (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative resolution proceeding in this or 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; or

...

It is our opinion that the language of the ABA Model Rule 5.5 addressing this issue should be included in the revision to Rule 5.05 of the Texas Disciplinary Rules of Professional Conduct. Such a revision is necessary to provide guidance to attorneys admitted in another state who wish to participate in an arbitration or mediation in Texas. This issue is likely to recur, especially with the increasing use of national law firms and the ease with which attorneys can travel and/or appear remotely in the course of practicing law. Since it is not likely that this rule will be revisited again soon, the Committee should address this issue now. We suggest that the ABA model rule language should be included in new section (c). The language we propose is attached for your consideration.

2. *New section (d) should be deleted.*

New section (d) in the proposed Rule 5.05 uses language that is inconsistent with new section (c) and will create enforcement difficulties for the UPL Committee. As discussed below, we believe that the ABA Model Rule 5.5 does a better job of dealing with a temporary law practice in Texas by a lawyer who is not admitted to practice law in Texas.

a. *Language inconsistencies.*

Section (c) uses “admitted to practice law,” while section (d) uses “authorized to practice law.” Section (c) also refers to “a jurisdiction outside this state,” while section (d) refers to “in one or more jurisdictions.” These inconsistencies could render the rule ambiguous and difficult to enforce. For example, if the test for practice in Texas is generally admission to practice law in Texas, does “authorized to practice law” in another jurisdiction contemplate a lesser standard? It is unclear what is meant by authority to practice law in another jurisdiction. And, because section (c) refers to a “jurisdiction outside this state,” and section (d) refers to “one or more jurisdictions,” what is a “jurisdiction” as used in section (d)? Does that include jurisdictions outside the United States? Does that include a federal or state agency in which a non-lawyer is “authorized” to represent a person before the agency?

We would also point out that the language added to the comments employing the phrase “where the lawyer is not licensed,” is inconsistent with the rule’s use of “admitted to practice law.” While licensure and admission are generally synonymous, there is no reason to use a different expression of the same concept.

b. *Surplusage.*

The language in section (d) allowing the practice of law in Texas by a lawyer who is not admitted to practice law in Texas from a “temporary or permanent residence” is surplusage because of the immediately following phrase, “or other location in this jurisdiction.” “Other location” is so broad that it is not necessary to refer to a temporary or permanent location.

c. *Ambiguity.*

The exception in Section (d)(2), “except as permitted by Texas or federal law,” renders section (d) ambiguous and difficult to enforce. The rule begins by prohibiting solicitation or acceptance of Texas residents or citizens as clients on matters primarily requiring advice on Texas or local law, “except as permitted by Texas or federal law.” The exception begs the question, what Texas or federal law permits a lawyer who is not admitted to practice law in Texas to solicit or accept Texas residents or citizens as clients? The exception suggests the existence of such law. However, without defining

such law, or even addressing it in the comments, the exception could be misconstrued to imply a broader exception than should be recognized. For example, some Texas agencies permit non-lawyers to represent persons before the agency. And the United States Supreme Court recognized the right of lawyers who are not admitted in the local state to represent persons within that state on purely federal matters (patent applications). *See, e.g., Sperry v. Florida ex rel. Florida Bar*, 373 U.S. 379 (1963).

d. Difficulty of UPL prosecutions under the proposed new rule.

Subsections (d)(2) and (d)(3) use a subjective belief standard that will be difficult to enforce. Subsection (d)(2) refers to ... “that the lawyer knows primarily require advice on the state or local law of Texas.” A subjective belief standard is difficult to prove, and therefore, any UPL prosecution will be complicated by the violating attorney merely claiming an innocent subjective belief.

Subsection (d)(3) refers to “When the lawyer knows or reasonably should know that a person with whom the lawyer is dealing mistakenly believes that the lawyer is authorized to practice law in this jurisdiction...” While this language uses both a subjective and objective reasonable lawyer standard, it makes UPL prosecution more difficult because it requires proof of a subjective or objective belief that the client has misunderstood that the lawyer was authorized to practice law in Texas and gives the violating lawyer a defense if he or she can prove diligent efforts to correct that misunderstanding.

We do not believe that proposed Section (d) is appropriate and this change should not be made to Rule 5.05. The ABA model rule addresses the issue of a lawyer admitted in another jurisdiction providing legal services on a temporary basis while in Texas. We believe the ABA model rule, Section 5.5 (c) provides a better expression of a rule addressing temporary practice in Texas and commend Section (c) to the Committee for consideration. A copy of the ABA Model Rule is attached.

Also attached is a copy of the proposed Rule 5.05 with deletions and revisions which we propose to the Committee.

State Bar of Texas

04/07/2023

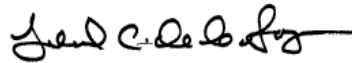
Page 5

Thank you for considering our comments. We understand the Committee's goal is to update Rule 5.05 in light of current developments and trends and we welcome this fresh look at our existing rule. We believe changes to Rule 5.05 are timely and necessary. We hope that our comments help to inform the Committee of the views of the Texas UPL Committee and we are available for further discussion or clarification of the concerns expressed above.

Yours very truly,



Christopher J. Lowman
Chair, Texas UPL Committee



Leland C. de la Garza
Immediate Past Chair and Current Member,
Texas UPL Committee

**Proposed Rule 5.05 from the Texas Unauthorized Practice of Law Committee
(Redline Version)**

Rule 5.05. Unauthorized Practice of Law; Remote Practice of Law

- (a) A lawyer shall not:
- (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
 - (2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.
- (b) Unless authorized by other law, only a lawyer who is admitted to practice in this jurisdiction may hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted to practice law in a jurisdiction outside this state, and not disbarred or suspended from practice or the equivalent thereof in any jurisdiction, may ~~provide legal services~~

(1) provide legal services solely to the lawyer's employer or its organizational affiliates, provided that this jurisdiction does not require pro hac vice admission; or

(2) provide legal services on a temporary basis in this jurisdiction that are in or reasonably related to a pending or potential arbitration, mediation, or other alternative resolution proceeding in this or 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.

Source: ABA Model Rules of Professional Conduct, Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law

- ~~(d) A lawyer who is not admitted to practice in this State, but who is authorized to practice law in one or more jurisdictions, may practice law from a temporary or permanent residence or other location in this jurisdiction, provided that:~~

~~(1) The lawyer does not use advertising, oral representations, business letterhead, websites, signage, business cards, email signature blocks, or~~

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~~other communications to hold themselves out, publicly or privately, as authorized to practice law in this jurisdiction, or as having an office for the practice of law in this jurisdiction;~~

- ~~(2) The lawyer does not solicit or accept residents or citizens of Texas as clients on matters that the lawyer knows primarily require advice on the state or local law of Texas, except as permitted by Texas or federal law; and~~
- ~~(3) When the lawyer knows or reasonably should know that a person with whom the lawyer is dealing mistakenly believes that the lawyer is authorized to practice law in this jurisdiction, the lawyer shall make diligent efforts to correct that misunderstanding.~~

**Proposed Rule 5.05 from the Texas Unauthorized Practice of Law Committee
(Clean Version)**

Rule 5.05. Unauthorized Practice of Law; Remote Practice of Law

- (a) A lawyer shall not:
 - (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
 - (2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.
- (b) Unless authorized by other law, only a lawyer who is admitted to practice in this jurisdiction may hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted to practice law in a jurisdiction outside this state, and not disbarred or suspended from practice or the equivalent thereof in any jurisdiction, may:
 - (1) provide legal services solely to the lawyer's employer or its organizational affiliates, provided that this jurisdiction does not require pro hac vice admission; or
 - (2) provide legal services on a temporary basis in this jurisdiction that are in or reasonably related to a pending or potential arbitration, mediation, or other alternative resolution proceeding in this or 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.

Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law

Share:



Law Firms And Associations

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative resolution proceeding in this or 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; or

(4) are not within paragraphs (c) (2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, or a person otherwise lawfully practicing as

an in-house counsel under the laws of a foreign jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

- (1) are provided to the lawyer's employer or its organizational affiliates, are not services for which the forum requires pro hac vice admission; and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or
- (2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.

(e) For purposes of paragraph (d):

- (1) the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and subject to effective regulation and discipline by a duly constituted professional body or a public authority; or,
- (2) the person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction must be authorized to practice under this Rule by, in the exercise of its discretion, [the highest court of this jurisdiction].

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From: [Leland C. de la Garza](#)
To: [cdrr](#)
Cc: [Chris Lowman](#)
Subject: Rewrite of Rule 5.05
Date: Monday, April 10, 2023 12:46:21 PM
Attachments: [image001.png](#)
[image002.png](#)

I intend to address the Committee, together with Chris Lowman of the Texas Unauthorized Practice of Law Committee, on April 12, regarding Rule 5.05. I am a current member of the UPL Committee and past chairman. Mr. Lowman and my public comments are being delivered by a joint letter to the Committee.

Leland

LELAND C. DE LA GARZA
Shareholder

HALLETT&PERRIN

D 214.922.4164 M 972.935.2646 | [REDACTED]
1445 Ross Ave., Suite 2400 | Dallas, Texas 75202
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From: [Peter Lomtevas](#)
To: [cdrr](#)
Subject: Re: Seeking Comments on Proposed Rules 1.08, 3.09, 5.01, 5.05, 8.05, TDRPC
Date: Tuesday, March 21, 2023 11:26:47 AM

To The CDRR,

As For Rule 3.09 Special Responsibilities of a Prosecutor

In (f): What puzzles me is that the rule must specify in writing that a prosecutor cannot fake a case. Was faking a case the norm before this rule? Is this newly included paragraph a reaction to all the innocent people imprisoned falsely?

In General: Why are missing any specified sanctions and punishments of prosecutors who fake cases? We have these rules, so what if a prosecutor breaks any?

In the Comments Section: What puzzles me is that in a government that must be open and in cases where proceedings are public, what "privileged" information can a prosecutor have that is not subject to disclosure? Who makes that call among prosecutors that something possibly exculpatory can be deemed "privileged?"

As for Rule 1.08 - Conflicts of Interest

Comments: I completely disagree with the underlying assumption contained within this comment that lawyers are tricky, evil geniuses and businessmen who want to enter into business with a lawyer are idiots. The reality is the opposite: the businessman is crafty, and the lawyer is perfectly naive given the weak legal education (focused on federal law) he has received in law school compounded by the weak preparation afforded by bar review (focused on state law). Businessmen learn by daily experience while lawyers study the test.

Hence, the various statement made as to how clients are at risk without careful and independent guidance is a mind fake that places at risk the attorney who may want to leave private practice because of all the risk that entails.

As for Rule 5.01 - Responsibilities of a Supervisory Lawyer

I do not care what amendments take place that pertain to large attorney organizations. I only care about the solo practitioner and all the pitfalls in the rules that face him.

However, lawyers make awful leaders, and imposing upon them a duty to spot misconduct can be overwhelming.

Rule 5.05 - As For Unauthorized Practice of Law

I oppose state-level licensure of lawyers. This rule, whether in its old form or its new form, supports the isolation and protection of groups of lawyers and judges who are without public review and scrutiny. These groups become comfortable with each other and can rip off innocent citizens who believe there is justice in those courts.

This isolation from view mutates into appellate court complacency characterized by affirming every order entered by the trial court. Municipalities can be made immune from suit by a judge who is elevated, paid and promoted by the municipality. Lawyers stay quiet so they can win cases before such a judge. Judges can use any political fad in their orders, and no one can question them.

In recent years, political fads are now baked into statutes that judge cannot question. So, a parent who loses a child because of domestic violence has no recourse: has no defense, has no appeal. How about the child? We have unexplained school shootings around this nation. Are groups of lawyers and judges implementing federal family legislation at the root of these? An outsider cannot come without a year-long delay because of licensure?

I also oppose the law examiner's board review of lawyers seeking admission from state to state. Even the most trouble-free attorney must have all his complaints and arbitration re-litigated before each subsequent review board. In one state, client suits against the lawyer must be picked through. In other states, a lawyer's suits against clients must be picked through. Full faith and credit of one state's adjudications of a lawyer's misconduct mean nothing. This must stop.

I support a universal law license that is in force throughout the nation in any court. No state's laws are unique especially those preempted by federal legislation. The question is what has not been preempted by federal legislation? Which attorney cannot learn quickly a state's variations in the law and properly represent the public.

I do not subscribe to the idea that law licensure protects the hapless client from a bad lawyer. I submit that the lawyer needs better protection from the bad client. But that is a topic for a different discussion because we do not have a code of conduct for clients.

As for Rule 8.05 - Jurisdiction

Lawyers understand they have lost very many of the civil rights over the years. We cannot speak freely. We have to watch how we assemble in protests. I was a litigant in a contract dispute with an auto dealer where the imbecile judge yelled out, "You're a lawyer! This case cries out for a number," meaning I had no case and I had to settle while the dealer faked his case with no contractual terms giving rise to the suit. A well placed judicial complaint caused a judicial recusal, and a different judge decided the case on its merits.

Now comes multiple jeopardy again the lawyer. I am admitted in four states and like a game of dominoes, if a client fakes a charge against me that one state sustains, I lose all four state licenses. Violence including rape makes for sensational disbarments.

The language of your proposal, as the language in all your previous proposals, tightens the noose around the neck of the lawyer. The word, "may" is now replaced with "is subject to." What was a possibility is now a definite. Attorney discipline is becoming a turkey shoot.

The impact upon the public is devastating. Lawyers who leave practice cause a drop in supply which elevates counsel fees for the remaining population. If the idiot client made the complaint, then that client cut the branch upon which he sat. Disciplinary committees of non-practicing lawyers end up incorrectly deciding the lawyer's discipline, and another lawyer leaves practice.

There is also the loss of subject matter expert attorneys who leave. One area well publicized as enduring the most attorney discipline complaints is family law. Non-family practitioners discipline family law lawyers, and when those leave practice, clients have even fewer family lawyers from whom to hire.

This highly concentrated batch of practitioners does not operate in the client's best interests, but rather in their own best interests. Cases are decided with discipline in mind (heavy stippling), and the outcomes rarely match the facts and the law. A judge only needs to say "boo" at the lawyer, and the stipulation of settlement comes right away selling out the lawyer's client.

Comment: This statement is vague: *as well as lawyers not admitted to practice in this state who provide or offer any legal services in this jurisdiction*. What is a "legal service?" Is it advice online? Is it what?

Comment: This is not true - *lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction*. Lawyer discipline has nothing to do with protecting clients; it has everything to do with protecting groupings of local judges and their local lawyers from exposure. Clients are not stupid and lawyers are not geniuses.

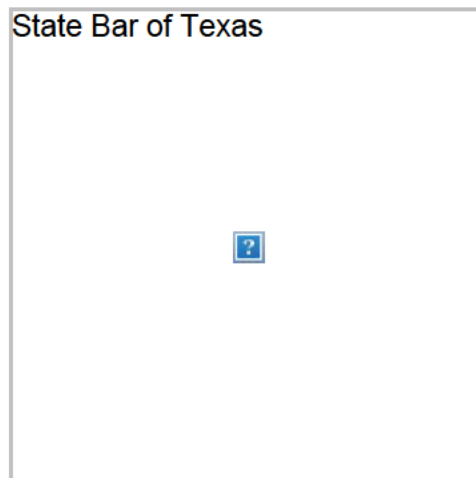
Comment: *The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters*. This is also ridiculous. A law license, like a driver license, does not make a lawyer an agent of the state. Lawyers are supposed to be independent of the state, and operate on both sides of a controversy. Here, the state has taken up a superior role as if the state is command headquarters and the lawyer is a soldier on the front. Personal service of process cannot be to the state because lawyers are not agents of the state; instead service of civil process must remain "personal" and not artificial.

Ultimately, the crossed off portions of the Comment section provided better protections for lawyers. I do not understand why the state has taken up arms against lawyers, but that is something we should be asking the voters in this state.

Peter

www.lomtevas.com

On Tuesday, March 21, 2023 at 10:03:29 AM CDT, State Bar of Texas - CDJR <cdjr@texasbar.com> wrote:



Proposed Rules Published

Public Comments Sought

Proposed Rules 1.08 (Conflict of Interest: Prohibited)

Transactions), 3.09 (Special Responsibilities of a Prosecutor), 5.01 (Responsibilities of a Partner or Supervisory Lawyer), 5.05 (Unauthorized Practice of Law; Remote Practice of Law), 8.05 (Jurisdiction), TDRPC

The Committee on Disciplinary Rules and Referenda published [Proposed Rule 3.09 \(Special Responsibilities of a Prosecutor\)](#) of the Texas Disciplinary Rules of Professional Conduct in the January issue of the Texas Bar Journal and the January 13 issue of the Texas Register. The Committee on Disciplinary Rules and Referenda published [Proposed Rules 1.08 \(Conflict of Interest: Prohibited Transactions\), 5.01 \(Responsibilities of a Partner or Supervisory Lawyer\), 5.05 \(Unauthorized Practice of Law; Remote Practice of Law\)](#), and [8.05 \(Jurisdiction\)](#) of the Texas Disciplinary Rules of Professional Conduct in the March issue of the Texas Bar Journal and the March 3 issue of the Texas Register.

The Committee will accept comments concerning Proposed Rules 1.08, 3.09, 5.01, 5.05, and 8.05, TDRPC, through April 13, 2023. Comments can be submitted [here](#), or by email to cdr@texasbar.com.

The Committee will hold a public hearing on Proposed Rules 1.08, 3.09, 5.01, 5.05, and 8.05 by teleconference at 10:00 a.m. CDT on April 12, 2023. For teleconference participation information, please go to texasbar.com/cdr/participate. If you plan to address the Committee at the public hearing, it is requested that you email cdr@texasbar.com in advance of the hearing stating on which rule(s) you will comment.

Additional Information

The Committee is responsible for overseeing the initial process for proposing a change or addition to the disciplinary rules (Gov't Code § 81.0873). For more information, go to texasbar.com/cdr.

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Committee on Disciplinary Rules and Referenda

State Bar of Texas | 1414 Colorado | Austin, Texas 78701 | 800.204.2222

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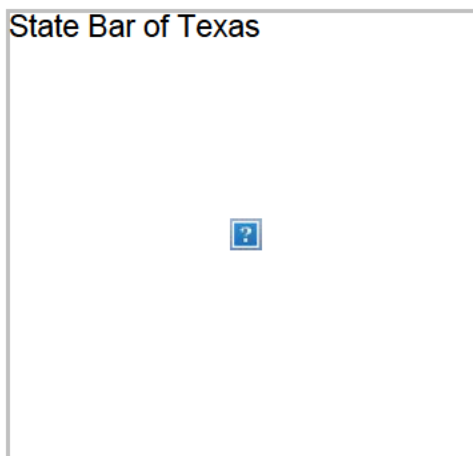
Higher Logic



From: [John McIntyre](#)
To: [cdrr](#)
Subject: Re: Seeking Comments on Proposed Rules 1.08, 3.09, 5.01, 5.05, 8.05, TDRPC
Date: Tuesday, March 21, 2023 11:27:08 AM

OVERBROAD , VIOLATE FREEDOM OF SPEECH, AND FREEDOM OF CONTRACT ! DUPLICITY TOO!

On Tuesday, March 21, 2023 at 10:02:49 AM CDT, State Bar of Texas - CDRR <cdrr@texasbar.com> wrote:



Proposed Rules Published

Public Comments Sought

Proposed Rules 1.08 (Conflict of Interest: Prohibited Transactions), 3.09 (Special Responsibilities of a Prosecutor), 5.01 (Responsibilities of a Partner or Supervisory Lawyer), 5.05 (Unauthorized Practice of Law; Remote Practice of Law), 8.05 (Jurisdiction), TDRPC

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The Committee will accept comments concerning Proposed Rules 1.08, 3.09, 5.01, 5.05, and 8.05, TDRPC, through April 13, 2023. Comments can be submitted [here](#), or by email to cdrr@texasbar.com.

The Committee will hold a public hearing on Proposed Rules 1.08, 3.09, 5.01, 5.05, and 8.05 by teleconference at 10:00 a.m. CDT on April 12, 2023. For teleconference participation information, please go to texasbar.com/cdrr/participate. If you plan to address the Committee at the public

hearing, it is requested that you email cdrr@texasbar.com in advance of the hearing stating on which rule(s) you will comment.

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From: [Louis Leichter](#)
To: [cdrr](#)
Subject: RE: Public Hearing Reminder - Proposed Disciplinary Rule Changes
Date: Tuesday, April 4, 2023 10:29:40 AM
Attachments: [image001.png](#)

Good luck

Very truly yours,

Louis Leichter, Principal/Attorney
[REDACTED]



AUSTIN | 1602 E 7th St., Austin, TX 78702 | Phone: (512) 495-9995 | Fax: (512) 482-0164

HOUSTON* | 3700 N Main St., Houston, TX 77009 | Phone: (713) 714-2446

McALLEN* | 214 N 16th St., #128, McAllen, TX 78501 | Phone: (956) 205-0884

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From: State Bar of Texas - CDrr <cdrr@texasbar.com>
Sent: Tuesday, April 4, 2023 10:04 AM
To: Louis Leichter [REDACTED]
Subject: Public Hearing Reminder - Proposed Disciplinary Rule Changes

State Bar of Texas

Public Hearing Reminder

April 12 Public Hearing on Proposed Rules 1.08 (Conflict of Interest: Prohibited Transactions), 3.09 (Special Responsibilities of a Prosecutor), 5.01 (Responsibilities of a Partner or Supervisory Lawyer), 5.05 (Unauthorized Practice of Law; Remote Practice of Law), 8.05 (Jurisdiction), TDRPC

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The Committee will hold a public hearing on Proposed Rules 1.08, 3.09, 5.01, 5.05, and 8.05 by teleconference at 10 a.m. CDT on April 12, 2023. For teleconference participation information, please go to texasbar.com/cdrr/participate, where an agenda with a Zoom link will be posted before the meeting. If you plan to address the Committee at the public hearing, it is requested that you email cdrr@texasbar.com in advance of the hearing stating on which rule(s) you will comment.

The Committee will continue to accept comments concerning Proposed Rules 1.08, 3.09, 5.01, 5.05, and 8.05 through April 13, 2023. Comments can be submitted [here](#), or by email to cdrr@texasbar.com.

Additional Information

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Committee on Disciplinary Rules and Referenda

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From: [Seana Willing](#)
To: [cdrr](#)
Cc: [Andrea Low](#)
Subject: Re: Written Comments from CDC on Proposed Rule Changes
Date: Tuesday, April 11, 2023 4:40:48 PM
Attachments: [CDC Comments \(041123\).docx](#)
[Administering Justice Maryland Interprets Rule 3.8\(d\).pdf](#)

Andrea, I received feedback from our Ethics Helpline Attorneys as well as from CDC Regional Counsel regarding some of the proposed rule changes. We hope these written comments will prove helpful for the committee.

I will see you tomorrow at the Public Hearing; however, I do not intend to address the committee or make any public comments at the hearing. If asked, I can try to answer questions but we hope the memo speaks for itself.

Thank you!

Seana

STATE BAR OF TEXAS

*Office of Chief Disciplinary Counsel*

Date: April 11, 2023

To: Andrea Lowe, Rules Attorney

From: Seana Willing, Chief Disciplinary Counsel

Re: CDC Comments on Proposed Rules

Andrea,

Please accept these comments from the Office of Chief Disciplinary Counsel regarding some of the proposed rule changes being considered at the Public Hearing on April 12, 2023. The comments and recommendations are the result of consultation with CDC Regional Counsel and the Bar's Ethics Attorneys, who are happy to provide additional information is needed.

Regarding proposed TDRPC Rule 1.08:

We understand that the CDRR is substantively following the ABA Model Rule in its revisions of 1.08(a) and that the proposed comments are the same verbatim.

We would point out that the use of the words "or" and "adverse" in the first paragraph of the proposed rule may be problematic. For example, a fee agreement that includes stock in a start-up company to pay for the lawyer's services requires compliance with Rule 1.08(a) under Comment 1; however, is such an arrangement *adverse* to a client who has no other means to afford legal services? If it is not an adverse acquisition of stock, why does Comment 1 say it has to follow the rule?

Suggestion: Instead of saying "adverse to a client" substitute "prohibited by Rule 1.06." It is stronger than Comment 3 since not all conflicts can be waived under 1.06.

With regard to Comment 1 to Rule 1.08, which specifically states that the rule does not apply to "ordinary fee agreements," we would raise a concern with regard to *renegotiated* fee

agreements during the course of representation. Despite the conclusion in Ethics Opinion 679, the case law is clear about the presumption of unfairness to the client under these circumstances leading to the need for an additional requirement of fairness to the client if they negotiate a *new* fee agreement during the course of the representation. In such a situation, the attorney would still be able to rebut the presumption of unfairness.

We would like to see the Comment to 1.08 clarified to address that the rule *does* apply to renegotiated fee agreements; it should only exclude the original fee agreement which is negotiated before the creation of the attorney-client relationship.

Finally, Comment 1 talks about a lawyer being able to loan a client money. Depending on the fact pattern, such a loan may violate Rules 1.08 (d), (h) and, or 7.03(f). Comment 1 does not reference these rules.

Regarding proposed TDRPC Rule 3.09:

Our concern is that the added obligations to notify defendants or defense attorneys of the new information will be difficult to enforce when considering paragraph (g): *“A prosecutor who concludes in good faith that information is not subject to disclosure under paragraph (f) does not violate this rule even if the prosecutor’s conclusion is subsequently determined to be erroneous.”* It would be helpful to include a requirement that the prosecutor document in the State’s file that s/he has knowledge of the new information and the reason(s) why the prosecutor determined that the information is not subject to disclosure. Having to create and maintain such a written record may prevent situations where prosecutors have allegedly ignored new information that does not support their theory of the case.

We also have a concern to the extent that the proposed changes require the CDC and grievance committee panels to make the determination that the new and credible information creates a likelihood that the convicted defendant did not commit the offense. We would prefer that we not have to make that determination in a disciplinary case.

We have also attached an article, *Attorney Grievance Commission of Maryland v. Cassilly*, which demonstrates the need for the CDRR’s proposed rule changes.

Regarding proposed TDRPC Rule 5.01:

We support this rule change but suggest moving paragraphs (a) and (b) to comments since it is not clear whether and to what extent it would be a rule violation if an attorney did not comply with these provisions. Instead, these provisions could be factors to use to prove a violation of paragraph (c), which provides a clearer violation.

Nevertheless, we support the language providing the following preventative measure: *“...shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to these Rules.”* This is a subtle but important difference from the rule as it currently reads.

Additionally, we suggest the use of “Texas Disciplinary Rules of Professional Conduct” in Comments 1 and 8, as opposed to a generic reference.

Regarding proposed TDRPC Rule 5.05:

Including information and guidance regarding the remote practice of law is a welcome and overdue clarification to Rule 5.05 and will provide guidance to many attorneys calling for assistance on the Ethics Helpline. However, the comments provided by the UPLC regarding the proposed changes to Rule 5.05 also deserve serious consideration.

Regarding proposed TDRPC Rule 8.05:

As we pointed out earlier, Section 81.071 of the Texas Government Code controls jurisdiction in disciplinary proceedings and actions. According to statute, “[e]ach attorney admitted to practice in this state and each attorney specially admitted by a court of this state for a particular proceeding is subject to the disciplinary and disability jurisdiction of the supreme court and the Commission for Lawyer Discipline, a committee of the state bar.” Although clarification of Rule 8.05 is welcome since the Ethics Helpline Attorneys receive many calls from attorneys licensed outside of Texas who are interested in providing or offering legal services in Texas, it remains unclear to us whether the Court, by rule, can alter whether or to what extent attorneys who are not admitted to practice in this state would fall under the jurisdiction of the Court and the CFLD.

Additionally, it is unclear what this sentence in Comment 2 means: “A lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.05 appoints an *official* to be designated by this *court* to receive service of process in this jurisdiction.” These terms could use clarification.

Suggestion: Define or explain “an official.” Use “a tribunal” instead of “this court” so that it applies to evidentiary hearings.

Thank you for your consideration of this request. Please let us know if we can provide any additional information to the Committee.

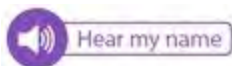
From: [Lewis Kinard](#)
To: [Andrea Low](#)
Subject: FW: Apologies!
Date: Wednesday, June 7, 2023 12:17:26 PM
Attachments: [image001.png](#)



Lewis Kinard

EVP, General Counsel, Assistant Corporate
 Secretary, Chief Ethics & Compliance Officer
American Heart Association
 7272 Greenville Ave., Dallas TX 75231
 O 214.706.1246

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From: Jerry R. Hall [REDACTED]
Sent: Wednesday, June 7, 2023 12:12 PM
To: Lewis Kinard [REDACTED]
Subject: Re: Apologies!

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Lewis,

I deeply appreciate you taking the time to personally respond to me about the technical issue I encountered. I hope that technical issue is easy to identify and resolve.

I also greatly appreciate your comments about my input. I have sought to err on the side of helpfulness over being perceived as “nitpicking” or a “nuisance” by raising concerns that might appear trivial. I hope I have succeeded in that regard.

That said—and given that you asked—I **will mention one other issue that occurred to me:**

The distinction between “admitted” to practice law in Texas and “authorized” to practice law in Texas, as those distinctions appear in the proposed version of 5.05, **could** provide a substantive difference for **attorneys who are only admitted in other jurisdictions but still appear to be "authorized" to practice in Texas—albeit in a very limited capacity—under the proposed version of 5.05(c).**

That may not have been the original intent behind that distinction in the language, of course. But a

lawyer who “may provide legal services solely to the lawyer’s employer or its organizational affiliates” might be considered authorized to practice law, if only in that limited capacity, **without** being admitted in Texas.

If you believe that is a “distinction without a difference,” then I will refrain from sending that thought to the Committee at large. On the other hand, if you believe that might be a helpful point for the Committee to consider, I would be more than happy to forward it to the email address you provided.

Again, thank you for your time and attention to these matters, both in your service as the Committee's chair and your email today.

Thanks again,

Jerry R. Hall
Senior Counsel
The Willis Law Group
1985 Forest Lane
Garland, TX 75042
(214) 736-9433 Main
(469) 367-5825 Direct
(214) 736-9994 Fax
www.thewillislawgroup.com
Correspondence Email: [REDACTED]
Service Email: service@thewillislawgroup.com



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From: Lewis Kinard [REDACTED]
Sent: Wednesday, June 7, 2023 11:47
To: Jerry R. Hall [REDACTED]
Subject: Apologies!

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Jerry,

We don't know what happened today but will figure it out before the next meeting. Thanks for

letting us know about the technical problem. Please send any additional thoughts by email to CDRR@TexasBar.com so we can consider those. I assure you that we will consider them.

Thanks again for taking the time and for your thoughtful insights.



Lewis Kinard

EVP, General Counsel, Assistant Corporate
Secretary, Chief Ethics & Compliance Officer
American Heart Association
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Hear my name

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**Video of Public Hearing on Proposed Rule 5.05 of the Texas Disciplinary
Rules of Professional Conduct**

**Held on April 12, 2023, by the Committee on Disciplinary Rules and
Referenda**

Video of Public Hearing on April 12, 2023

<https://texasbar-wo4m90g.vids.io/videos/d39fd8b21c10e9c55a/cdrr-meeting-april-12-2023>

Comments on proposed Rule 5.05:

Mary Jo Cantu at 1:12:17

Leland de la Garza at 1:16:13

Christopher Lowman at 1:24:05

Jerry Hall at 1:28:13

**Video of Public Meeting of the Texas Disciplinary Rules of Professional
Conduct**

Held on June 7, 2023, by the Committee on Disciplinary Rules and Referenda

Video of Public Meeting on June 7, 2023

<https://texasbar-wo4m90g.vids.io/videos/069fdab2131de8c58f/cdrr-meeting-june-7-2023>

Comments on proposed Rule 5.05:

Christopher Lowman at 00:25:08

From: "Moss, Fred" <[REDACTED]>
Date: 8/22/22 3:57 PM (GMT-06:00)
To: [REDACTED]
Subject: Need for a rule of ethics on the multijurisdictional practice of law

Lewis,

I hope you can properly consider this a request to the TCRR.

The request is simple. Texas is way behind the curve in not having an ethics rule that outlines what is proper in the multijurisdictional practice of law. As you know, this issue had come to a very fine point recently as a result of the pandemic. Lawyers who reside just outside the state in which they are licensed routinely advise their clients despite not be admitted where they were when they assisted their clients. Also, it is common today for lawyers to travel to states where they are not admitted to assist clients, e.g., to take a deposition or to negotiate a business deal. In the latter situation and when representing a client in a mediation, the "out of state" lawyer cannot seek admission pro hac vice. Then there is the very common situation where in-house counsel for a Texas company is not admitted in Texas. Are they engaged in the UPL??

Texas lawyers have no guidance on what is permissible. This was noted in the only Texas Ethics Opinion I could find that dealt with multijurisdictional practice, Op. 597 (2010). It noted:

"In the absence of a specific rule or substantial case-law development on this subject, the contours of the term "unauthorized practice of law" in Texas Disciplinary Rule 5.05(b) as applied to multijurisdictional practice are not currently well defined. In spite of the present uncertainty as to exactly what conduct would constitute unauthorized practice of law in Texas in the case of multijurisdictional practice,"

Note that there was no proposed rule on multijurisdictional practice on the 2011 Referendum ballot.

The ABA Model Rules extensively cover the topic in Rule 5.5. The Restatement of law Governing Lawyers covers it with an extremely brief rule, Section 3.

In short, I submit that the TCRR should look seriously into proposing a rule on this subject and plug the yawning gap in our Rules.

Thanks, as always, for your consideration.

Fred

Prof. Frederick C. Moss (Emeritus)
S.M.U. Dedman School of Law
Box 750116
3315 Daniel Ave.
Dallas, Tx 75275-0116
(c) 214-405-8438
[REDACTED]

"Do you ever read any of the books you burn?" "That's against the law!" "Oh. Of course." -Ray Bradbury, science-fiction writer (22 Aug 1920-2012)

BresnenAssociates**TO: MEMBERS OF THE SUBCOMMITTEE ON MULTIJURISDICTIONAL PRACTICE OF LAW****FROM: AMY BRESNEN****DATE: OCTOBER 26, 2022****RE: ABA MODEL RULE 5.5 UPDATE**

Professor Fred Moss wrote Chairman Kinard on August 22, 2022 to suggest CDRR review the Texas Rule on Multijurisdictional Law Practice (MJLP). The professor indicated that on top of the pandemic exacerbating the issue, TRDP 5.05 provides no clear guidance on what is and is not permissible. At what point is a Texas lawyer engaging in the unauthorized practice of law where this issue is concerned? The lack of guidance was also explicitly noted in Texas ethics opinion, Op. 597 (2010). This issue was not on the ballot in the 2011 referendum.

The ABA Model Rule 5.5 extensively covers the issue but the Rule is undergoing detailed review. The Standing Committee on Ethics and Professional Responsibility has been mulling over amendments to Model Rule 5.5 since the beginning of the year. Following the Ethics Committee brainstorming over the summer, the Center for Professional Responsibility Coordinating Chairwoman, Paula Frederick, approved the formation of a “Center-wide Working Group” to look further into amendments. The Working Group began its review in September and is in discussion about implementation issues that arise when discussing MJLP or “cross border practice” as some are calling the concept. Issues such as IOLTA, client protection funds, malpractice insurance coverage, and discipline structures are crucial to MJLP. As of now, there is no redraft of Model Rule 5.5 available for distribution as it is a mere skeleton of a proposal. I contacted Mary McDormott, who leads the ABA’s Standing Committee on Ethics and Professional Responsibility, about a timeline for proposed changes to 5.5. She said “We are so early in the process that I could not guess as to when a discussion draft might be circulated for comment.”

Findings on what other states are doing in this regard will also be helpful to CDRR. For one, there are many state variations of Model Rule 5.5. Hawaii, Mississippi, and Texas *do not* have a temporary practice provision. Some states, such as Arizona, have a more flexible version of the Model Rule. Arizona’s rule explicitly permits *in its Rule (not a comment)* lawyers from other states to move to Arizona, open a law firm in Arizona, and practice law in Arizona—so long as it's not *Arizona law* they are practicing. Other states, like Florida, have interpreted their Rule to allow the same treatment, but have done so through other means such as an ethics opinion or through relevant caselaw despite it not being spelled out in the state’s own disciplinary rule.

The ABA has published its own ethics opinion (ABA Op. 495 (2020)) interpreting its own model rule to allow this—with some qualifications, including the absence of a local jurisdiction’s

BresnenAssociates

finding that the activity constitutes the unauthorized practice of law in that jurisdiction. Frankly, at first glance, I did not find this to be unambiguously true but welcome the revisionist history.

The ABA is not the only entity interested in this issue. The Association of Professional Responsibility Lawyers (APRL) (some of you may be members), has been studying MJLP for years. It has come up with its own version of 5.5 (see attached). Many of its considerations in drafting its version of the rule may seem prophetic in hindsight-- as we've since endured practicing law during a pandemic and understand the importance of such considerations. For example, technology has clouded the question of what it means for a lawyer to practice law "in" a jurisdiction. Historically physical presence in a jurisdiction was the predominate factor. Technology has also made it easier for a lawyer to check the local rules of a jurisdiction thanks to the Internet and speedier communication with interested parties.

Other considerations include "access to justice" issues. Rural consumers have less access to lawyers than urban and suburban consumers. When rural-area lawyers retire, it less likely they will be replaced by new lawyers moving to the area. Geographic restrictions further exacerbate this problem. Also, it is costly for unemployed and under-employed lawyers to pay a second state's admission fees, satisfy CLE requirements, etc. And there is no indication lawyers harm the public by working across state lines. Many consumers (37%) prefer to meet virtually now that we have all learned how to zoom.

The APRL appears to be much further along in its MJLP review. Its proposal does not ignore state licensure and insists it actually buttresses public protection by requiring all lawyers in every jurisdiction to disclose the jurisdictions in which they are licensed. It preserves the authority of judicial branches to regulate who appears before them, reminds lawyers of their ethical obligation under MR 1.1 to be competent in all services provided, and ensures that lawyers will be held responsible for any misdeed committed in the relevant jurisdictions. These particular considerations will require careful thought and are partly why the ABA proposal may take some time to develop.

Rule 5.05. Unauthorized Practice of Law; Remote Practice of Law

(a) A lawyer shall not:

- (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession; or
- (2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

(b) Unless authorized by other law, only a lawyer who is admitted to practice in this jurisdiction may hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) (1) A lawyer admitted to practice law in a jurisdiction outside this state, and not disbarred or suspended from practice or the equivalent thereof in any jurisdiction, may provide legal services solely to the lawyer's employer or its organizational affiliates, provided that this jurisdiction does not require pro hac vice admission.

(2) Notwithstanding Subsection (1), when the services are performed by a lawyer admitted to practice law in a jurisdiction outside this state and require advice on the law of a jurisdiction to which the lawyer has not been admitted, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized to provide such advice by the jurisdiction whose law is the subject of the advice, unless the lawyer is authorized by federal or other law or rule to provide the services in this jurisdiction.

(d) For purposes of paragraph (c):

(1) The lawyer must be a member in good standing of a recognized legal profession in another jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and subject to effective regulation and discipline by a duly constituted professional body or a public authority; or

(2) The person otherwise lawfully practicing as an in-house counsel under the laws of another jurisdiction must be authorized to practice under this Rule by, in the exercise of its discretion, the Texas Supreme Court.

Comment:

1. Courts generally have prohibited the unauthorized practice of law because of a perceived need to protect individuals and the public from the mistakes of the untrained and the schemes of the unscrupulous, who are not subject to the judicially imposed disciplinary standards of competence,

responsibility and accountability.

2. Neither statutory nor judicial definitions offer clear guidelines as to what constitutes the practice of law or the unauthorized practice of law. All too frequently, the definitions are so broad as to be meaningless and amount to little more than the statement that “the practice of law” is merely whatever lawyers do or are traditionally understood to do. The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons.

3. Rule 5.05 does not attempt to define what constitutes the “unauthorized practice of law” but leaves the definition to judicial development. Judicial development of the concept of “law practice” should emphasize that the concept is broad enough--but only broad enough--to cover all situations where there is rendition of services for others that call for the professional judgment of a lawyer and where the one receiving the services generally will be unable to judge whether adequate services are being rendered and is, therefore, in need of the protection afforded by the regulation of the legal profession.

Competent professional judgment is the product of a trained familiarity with law and legal processes, a disciplined, analytical approach to legal problems, and a firm ethical commitment; and the essence of the professional judgment of the lawyer is the lawyer's educated ability to relate the general body and philosophy of law to a specific legal problem of a client.

4. Paragraph [\(a\)\(2\)](#) of Rule 5.05 does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them. So long as the lawyer supervises the delegated work, and retains responsibility for the work, and maintains a direct relationship with the client, the paraprofessional cannot reasonably be said to have engaged in activity that constitutes the unauthorized practice of law. See Rule

5.03. Likewise, paragraph [\(a\)\(2\)](#) does not prohibit lawyers from providing professional advice and instructions to nonlawyers whose employment requires knowledge of law. For example, claims adjusters, employees of financial institutions, social workers, abstracters, police officers, accountants, and persons employed in government agencies are engaged in occupations requiring knowledge of law; and a lawyer who assists them to carry out their proper functions is not assisting the unauthorized practice of law. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se, since a nonlawyer who represents himself or herself is not engaged in the unauthorized practice of law.

5. Authority to engage in the practice of law conferred in any jurisdiction is not necessarily a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where doing so violates the regulation of the practice of law in that jurisdiction. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by individual states. In furtherance of the public interest, lawyers should discourage regulations that unreasonably impose territorial limitations upon the right of a lawyer to handle the legal affairs of a client or upon the opportunity of a client to obtain the

services of a lawyer of his or her choice. For example, a lawyer who simply establishes a residence in one state and continues to provide legal work to out-of-state clients from the lawyer's private residence does not establish a regular presence in the state in which the lawyer resides for the practice of law.

6. Like many other professions, modernity and technology have made it possible for lawyers to work remotely. Lawyers who are licensed in another jurisdiction but working remotely from this state may permissibly practice law as if they were present in their home jurisdiction, as long as they do not hold themselves out as being licensed to practice in this jurisdiction, or advertise they are licensed to practice in this jurisdiction.

Rule 5.05. Unauthorized Practice of Law; Remote Practice of Law

(a) A lawyer shall not:

- (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession ~~in that jurisdiction~~; or
- (2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

(b) Unless authorized by other law, only a lawyer who is admitted to practice in this jurisdiction may hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) (1) A lawyer admitted to practice law in a jurisdiction outside this state, and not disbarred or suspended from practice, or the equivalent thereof, in any jurisdiction, may provide legal services ~~through an office or other systematic and continuous presence in this jurisdiction that are provided solely~~ to the lawyer's employer or its organizational affiliates, provided that this jurisdiction does not and are not services for which the forum requires pro hac vice admission.

(2) Notwithstanding Subsection (1), when the services are performed by a lawyer admitted to practice law in a jurisdiction outside this state and require advice on the law of a jurisdiction to which the lawyer has not been admitted, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized to provide such advice by the jurisdiction whose law is the subject of the advice, unless the lawyer is authorized by federal or other law or rule to provide the services in this jurisdiction.

(d) For purposes of paragraph (c):

- (1) The lawyer must be a member in good standing of a recognized legal profession in another jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and subject to effective regulation and discipline by a duly constituted professional body or a public authority; or
- (2) The person otherwise lawfully practicing as an in-house counsel under the laws of another jurisdiction must be authorized to practice under this Rule by, in the exercise of its discretion, the Texas Supreme Court.

Comment:

1. Courts generally have prohibited the unauthorized practice of law because of a perceived need to protect individuals and the public from the mistakes of the untrained and the schemes of the unscrupulous, who are not subject to the judicially imposed disciplinary standards of competence,

responsibility and accountability.

2. Neither statutory nor judicial definitions offer clear guidelines as to what constitutes the practice of law or the unauthorized practice of law. All too frequently, the definitions are so broad as to be meaningless and amount to little more than the statement that “the practice of law” is merely whatever lawyers do or are traditionally understood to do. The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons.

3. Rule 5.05 does not attempt to define what constitutes the “unauthorized practice of law” but leaves the definition to judicial development. Judicial development of the concept of “law practice” should emphasize that the concept is broad enough--but only broad enough--to cover all situations where there is rendition of services for others that call for the professional judgment of a lawyer and where the one receiving the services generally will be unable to judge whether adequate services are being rendered and is, therefore, in need of the protection afforded by the regulation of the legal profession.

Competent professional judgment is the product of a trained familiarity with law and legal processes, a disciplined, analytical approach to legal problems, and a firm ethical commitment; and the essence of the professional judgment of the lawyer is the lawyer's educated ability to relate the general body and philosophy of law to a specific legal problem of a client.

4. Paragraph (a)(2) of Rule 5.05 does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them. So long as the lawyer supervises the delegated work, and retains responsibility for the work, and maintains a direct relationship with the client, the paraprofessional cannot reasonably be said to have engaged in activity that constitutes the unauthorized practice of law. See Rule 5.03. Likewise, paragraph (a)(2) does not prohibit lawyers from providing professional advice and instructions to nonlawyers whose employment requires knowledge of law. For example, claims adjusters, employees of financial institutions, social workers, abstracters, police officers, accountants, and persons employed in government agencies are engaged in occupations requiring knowledge of law; and a lawyer who assists them to carry out their proper functions is not assisting the unauthorized practice of law. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se, since a nonlawyer who represents himself or herself is not engaged in the unauthorized practice of law.

5. Authority to engage in the practice of law conferred in any jurisdiction is not necessarily a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where doing so violates the regulation of the practice of law in that jurisdiction. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by individual states. In furtherance of the public interest, lawyers should discourage regulations that unreasonably impose territorial limitations upon the right of a lawyer to handle the legal affairs of a client or upon the opportunity of a client to obtain the services of a lawyer of his or her choice. For example, a lawyer who simply establishes a residence in one state and continues to provide legal work to out-of-state clients from the lawyer's private residence does not establish a regular presence in the state in which the lawyer resides for the practice of law.

6. Like many other professions, modernity and technology have made it possible for lawyers to work remotely. Lawyers who are licensed in another jurisdiction but working remotely from this state may permissibly practice law as if they were present in their home jurisdiction, as long as they do not hold themselves out as being licensed to practice in this jurisdiction, or advertise they are licensed to practice in this jurisdiction.

**Rule 5.05 Version 4, which reflects changes made after the January meeting.
Intended for discussion at the February 2023 meeting**

Rule 5.05. Unauthorized Practice of Law; Remote Practice of Law

- (a) A lawyer shall not:
- (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
 - (2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.
- (b) Unless authorized by other law, only a lawyer who is admitted to practice in this jurisdiction may hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted to practice law in a jurisdiction outside this state, and not disbarred or suspended from practice or the equivalent thereof in any jurisdiction, may provide legal services solely to the lawyer's employer or its organizational affiliates, provided that this jurisdiction does not require pro hac vice admission.
- (d) A lawyer who is not admitted to practice in this State, but who is authorized to practice law in one or more jurisdictions, may practice law from a temporary or permanent residence or other location in this jurisdiction, provided that:
- (1) The lawyer does not use advertising, oral representations, business letterhead, websites, signage, business cards, email signature blocks, or other communications to hold themselves out, publicly or privately, as authorized to practice law in this jurisdiction, or as having an office for the practice of law in this jurisdiction;
 - (2) The lawyer does not solicit or accept residents or citizens of Texas as clients on matters that the lawyer knows primarily require advice on the state or local law of Texas, except as permitted by Texas or federal law; and
 - (3) When the lawyer knows or reasonably should know that a person with whom the lawyer is dealing mistakenly believes that the lawyer is authorized to practice law in this jurisdiction, the lawyer shall make diligent efforts to correct that misunderstanding.

Comment:

1. Courts generally have prohibited the unauthorized practice of law because of a perceived need to protect prospective clients from the mistakes of the untrained and the schemes of the unscrupulous, who are not subject to the judicially imposed disciplinary standards of

competence, responsibility, and accountability.

2. The definition of the practice of law is established by law and varies from one jurisdiction to another. Judicial development of the concept of “law practice” should be broad enough to cover all situations where there is rendition of legal services for others that calls for the professional judgment of a lawyer and where there is a need the protections afforded by the regulation of the legal profession.

3. Competent professional judgment is the product of a trained familiarity with law and legal processes. In representing a client with respect to matters involving the law of other jurisdictions where the lawyer is not licensed, the lawyer may need to consult, with the client’s consent, lawyers licensed in the other jurisdiction.

4. This rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, provided that the lawyer supervises and takes responsibility for the work, and maintains a direct relationship with the client.

5. This rule also does not prohibit lawyers from providing professional advice and instructions to nonlawyers whose employment requires knowledge of law, such as claims adjusters, employees of financial institutions, social workers, abstracters, police officers, accountants, and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se, since a nonlawyer who represents himself or herself is not engaged in the unauthorized practice of law.