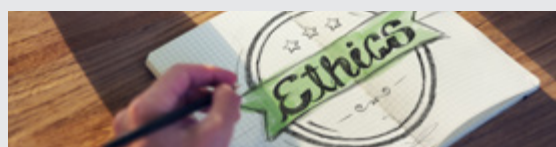
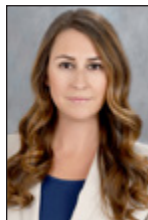


Q&A



LAWYER LIABILITY AND ETHICS

Some Silver Linings for the Legal Practice from the COVID-19 Pandemic



Jessica Lienau Beckwith

As I prepared to write this article, at first I was a bit down that I was again writing about COVID-19. The personal and professional impacts of the COVID-19 pandemic cannot be overstated. Although this time has been challenging and painful, there are some silver linings for attorneys.

Flexibility:

First, whether by necessity (from stay-at-home orders) or by choice, many attorneys are working from home instead of from an office. Prior to the pandemic, many firms disfavored attorneys working from home and face time remained a significant – if unspoken – requirement. Now, attorneys can work from home and there is less of an emphasis on the 9-5 working hours. Many attorneys are now working early in the morning and late in the evening with some breaks for other non-law related responsibilities such as child or elderly family care.

In an interview with Law.com, Stuart Fuller, the global head of the legal services arm of Big Four accounting firm KPMG, stated that a critical message emerged from Hong Kong and Shanghai before the crisis took hold around the rest of the world. And it has become KPMG's short-term mantra: Don't stop what you're doing—change the way you do it. Thus, attorneys likely don't need to be retrained on their substantive area of practice, but even tech-savvy attorneys will need to refine how to best integrate automated systems into their practice.

Law firms and lawyers are not the only ones changing the way they do things. Courts and administrative agencies have moved, at least temporarily, to handling hearings, status conferences and even trials via Zoom-type platforms. Some attorneys believe

these changes should be adapted, at least in part, permanently. There are significant cost-savings to clients when attorneys do not have to travel and sit around waiting at a courthouse. Further, many attorneys are woefully overworked, so spending less time traveling to various hearings may allow attorneys more time in the day to focus on substantive work.

Living Where You Want:

Long before the COVID-19 pandemic, some lawyers have been arguing that the delivery of competent legal services can happen from any location at any time. Fortunately for attorneys not licensed in Arizona, but licensed elsewhere, who want to live in Arizona, Arizona already allows lawyers to practice here as long as they disclose that they're not licensed to practice in Arizona pursuant to Ethical Rule 5.5. However, Arizona is one of a select few states that have expressly acknowledged that it is not the unauthorized practice of law to practice remotely; that is, being physically present outside the state in which a lawyer is licensed while working on matters in the state of licensure.

ABA Model Rule 5.5 is the basis for the standard regarding temporary practice in most states. ABA Rule 5.5 says lawyers admitted in one U.S. jurisdiction and not disbarred or suspended may provide legal services in another jurisdiction only temporarily and with strict conditions. However, exactly what temporarily means has not been uniformly interpreted amongst various jurisdictions. Further, some attorneys have moved states during the pandemic in what they intend to be a temporary move but may end up being more than a year due to the length of the pandemic (which is outside the attorney's control). The genesis for these moves may be risk factors for the attorney or the attorney's family or a desire to reside in

a less populated area during the pandemic. Whether or not the reason for a temporary relocation during the pandemic would matter to certain Bars is an unanswered question.

During the pandemic, at least one state, Florida, has tentatively determined that it is permissible for attorneys residing in Florida but licensed elsewhere to practice the law of the jurisdictions where they are admitted. The Florida Bar's Standing Committee on the Unlicensed Practice of Law wrote in its draft advisory opinion that an attorney "who simply establishes a residence in Florida and continues to provide legal work to out-of-state clients from his private Florida residence under the circumstances described in this request does not establish a regular presence in Florida for the practice of law." The Advisory Opinion has not yet been adopted by the Florida Supreme Court but does show a departure from the protectionist viewpoint many Bars have traditionally taken.

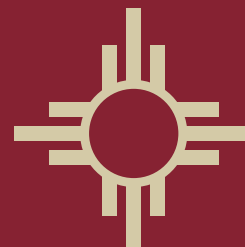
Professionalism & Courtesy:

Some legal commentators have argued that as email became the preferred form of

communication between counsel for the last couple of decades, that professionalism and courtesy were becoming lost. It seemed easier to be rude to someone you had never spoken to or shook hands with. Arguably now, during the pandemic when all attorneys are somewhat similarly situated in navigating a global pandemic and the concomitant challenges, attorneys are more understanding toward opposing counsel and are willing to grant an extension or otherwise act with courtesy and respect.

Although the pandemic is not an event that can objectively be characterized as a positive, there are a few silver linings—more flexibility for attorneys, a possible rethinking of antiquated ethics rules regarding the unauthorized practice of law and more professional courtesy amongst lawyers. ■

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