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# Questions For Remote Attys Linger After Fla. Rule Overhaul

By [Madison Arnold](#) | Feb 25, 2022, 4:30 PM EST · [Listen to article](#)

In the midst of a coronavirus pandemic that has found more and more attorneys working remotely, the [Florida Supreme Court](#)'s recent move to adopt rules for out-of-state attorneys physically working in the Sunshine State has drawn praise even as some experts say it leaves room for improvement.

The state high court adopted proposed language last week allowing out-of-state attorneys to work remotely from Florida as long as they are working on non-Florida related matters and neither the attorney nor their firm hold out to the public that they have a Florida "presence."

Some are concerned, however, that the update isn't clear enough, particularly because the rule still uses old language like "office" and "presence" that may have different meanings in a more virtual work environment.

"It's still a little bit fuzzy," said Michele DeStefano, a professor at the University of Miami School of Law and founder of the nonprofit LawWithoutWalls. "Is this rule in line with the way people work today? Unfortunately, what happens with these rules is they have some of the old when they bring in the new. And so we're still using words like 'presence.' And what they mean is physical presence, right? But you can be present in Florida in a lot of ways other than physically."

What she said she struggled with the most was language dictating that neither the lawyer nor the firm should hold out to the public as having a Florida presence. She questioned how that might apply to out-of-state attorneys working remotely while in Florida on non-Florida matters but whose firms do have a presence in Florida in a traditional sense.

"I think that it starts to be very limiting given that it isn't how the world works. Tons of lawyers work at firms and tons of firms have presences and offices here in Florida," DeStefano said.

The Florida Supreme Court first got involved with remote work guidance last year when it signed off on an advisory opinion from a [Florida Bar](#) committee. That committee found that attorneys licensed in other states working remotely while in Florida did not constitute the unlicensed practice of law.

Following the advisory opinion, the state Supreme Court asked the Florida Bar to consider amending the comment to the unlicensed practice of law rule that would better explain circumstances for which attorneys could work remotely. That proposed update, as well as some other minor grammatical changes to the rule were accepted by the Florida Supreme Court last week.

The issue itself dates back to 2019, even before the COVID-19 pandemic sent countless workers home to curb the spread of the virus. Back then, a retiring New Jersey intellectual property attorney, Thomas A. Restaino, sought guidance about whether he could continue to practice New Jersey law from his home in Florida.

"It wasn't clear and, of course, both states have a significant interest in making sure there isn't unlicensed practice of law, and so I treat that issue seriously. And because there wasn't enough clarity around it, I sought the advice [and] the direction of the Florida Bar," Restaino said in an interview with Law360. "It was just my desire to make sure I was staying on the right side of the line here, especially on ethical issues."

The changes triggered by Restaino provide clarity for lawyers, he said, adding that since seeking the change he's heard from many fellow attorneys who have reached out with questions or just to thank him for making the effort.

"People obviously wanted that flexibility," he said. "They didn't want to hang out a shingle. They didn't want to hold themselves out as a Florida lawyer. They didn't want to work with Florida clients, whether they be people or businesses," he said.

"I think both the Florida Bar and, ultimately, the Florida Supreme Court, looked at all of that and said 'Well, if you're not going to do any of those things, then we're OK because those are the things we worry about with unlicensed practice of law, and you're not doing any of them. So it's fine.'"

Florida's route for accommodating remote attorneys is a much different one than many other states, said Jan L. Jacobowitz, founder of Legal Ethics Advisor and a lecturer at the University

of Miami School of Law. Instead, other states such as Pennsylvania, have come out with opinions telling lawyers licensed in their own states that they're allowed to practice law remotely outside their borders, as long as it's OK in the state where they're residing.

"While it was already a topic of discussion for some of us, the pandemic just catapulted the legal profession into the tech world," she said. "Some of the legal profession had embraced it, but much of the legal profession, maybe not so much. Not just the legal profession, everyone had to become more tech savvy, so these opinions have started coming out maybe sooner than they would've because of the necessity of lawyers being locked down and living one place and being barred somewhere else."

Jacobowitz said that she didn't see many downsides to states adopting these remote work rules for attorneys. However, she did question how many would actually use the rules to work elsewhere.

"I just think that in places like Florida, where people often come to get out of the cold in the winter, or some people have a second residence, they can just be more comfortable or more productive. But it remains to be seen how many people are really going to take advantage of these roles or whether it's just going to smooth out options for lawyers," Jacobowitz said.

No matter the number of attorneys who may take advantage of the rule, DeStefano worries that the update didn't go far enough. DeStefano herself has been working remotely since 2010 and has had to navigate undefined waters of remote work across states before.

For her, the ideal solution would have been for the Florida Bar and the Florida Supreme Court to throw out the existing language instead of just amending it. That way, it could be developed around modern methods of working remotely.

"It makes it murky, and when rules are murky, they're harder to ensure compliance," DeStefano said. "I think the rule needs to be overhauled."

--Editing by Andrew Cohen.

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