

STATE BAR OF NEVADA
STANDING COMMITTEE ON
ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion No. 59

QUESTIONS PRESENTED

1. Does utilization of a “coworking” office space for the practice of an attorney admitted in Nevada but residing outside of Nevada constitute maintaining an office in Nevada for purposes of SCR 42.1?

2. Is a nonresident attorney admitted in Nevada and using a “coworking” office space in Nevada subject to the advertising filing requirements of NRPC 7.2A with regard to the attorney’s business cards, letterhead, and website?

ANSWER TO QUESTION ONE

Yes, utilization of a “coworking” office space for the practice of an attorney admitted in Nevada but residing outside of Nevada constitutes maintaining an office in Nevada for purposes of SCR 42.1, subject to various conditions and an exception as outlined in this opinion.

DISCUSSION

Nevada Supreme Court Rule (SCR) 42.1 is directed toward attorneys who are admitted to practice in Nevada but who do not “maintain an office in Nevada.” SCR 42.1(1). The Rule does not specify what it means to “maintain an office in Nevada,” other than to state that “[a] post office box or mail drop location shall not constitute an office under this rule.” *Id.*

Any Nevada attorney who does not “maintain an office in Nevada” is required to comply with SCR 42.1(2), which states as follows:

Upon filing any pleadings or other papers in the courts of this state, an attorney who is subject to this rule shall either associate a licensed Nevada attorney maintaining an office in Nevada or designate a licensed Nevada attorney maintaining an office in the county wherein the pleading or paper is filed, upon whom all papers, process, or pleadings required to be served upon the attorney may be so served, including service by hand-delivery or facsimile transmission. The name and office address of the associated or designated attorney shall be endorsed upon the pleadings or papers filed in the courts of this state, and service upon the associated or designated attorney shall be deemed to be service upon the attorney filing the pleading or other paper.

The requirements in SCR 42.1(2) are in addition to “any rules of practice of the courts of this state.” SCR 42.1(3).

As a preliminary matter, the Committee notes that SCR 42.1 does not distinguish between resident and nonresident Nevada attorneys. Thus, while this opinion addresses a proposed hypothetical arrangement involving a nonresident Nevada attorney, the analysis would be the same for a resident Nevada attorney in terms of whether a “coworking” office space constitutes “maintain[ing] an office in Nevada” for purposes of SCR 42.1.¹

The Committee previously examined three different hypothetical arrangements, each of which involved an iteration of a nonresident Nevada attorney’s utilization of space within a client’s business in Nevada, for purposes of determining whether one or more of those hypothetical arrangements qualifies as maintaining an office in Nevada under a former version of SCR 42.1. *See* STATE BAR OF NEV., STANDING COMM. ON ETHICS & PROF’L RESPONSIBILITY, FORMAL OP. 19 (June 16, 1994) [hereinafter, “Formal Op. 19”].² In Formal Op. 19, the Committee concluded that none of the proposed hypothetical arrangements would constitute maintaining an office in Nevada for purposes of the Rule.

The Committee has since been asked to examine a different hypothetical arrangement—specifically, the utilization of a “coworking” office space in Nevada by a nonresident Nevada attorney—to determine whether it would constitute maintaining an office in Nevada under SCR 42.1. “Coworking” is a common business services model that involves individuals working independently or collaboratively in a shared office space, allowing cost savings and convenience. While there is no single definition of a “coworking” office space, certain elements are common to a coworking environment, such as open desk areas, private meeting rooms, shared office equipment, and a shared receptionist. Often, although not always, a coworking environment is home to a number of professionals from different industries and markets.

Coworking is a common trend in the legal industry, including for solo practitioners and contract attorneys, and is a way to avoid or minimize the overhead associated with owning or leasing a traditional law office. In general, attorneys may find it appealing or necessary to work from home while still having access to a coworking office space where they may arrange to meet, in person, with clients, opposing parties, and witnesses in private offices and conference rooms. These attorneys may then coordinate for process servers and runners to deliver and pick up documents to and from the coworking office space during normal business hours and list the address of the coworking office space on their business cards, letterheads, and websites.

The utilization of a coworking office space is not prohibited by the Nevada Rules of Professional Conduct (NRPC). That being said, Nevada attorneys who avail themselves of the benefits of a coworking office space are subject to the same ethical obligations as Nevada attorneys who work out of traditional, brick-and-mortar law offices.

¹ NRPC 7.5A, which governs the registration of multijurisdictional law firms, does distinguish between resident and nonresident Nevada attorneys. The relationship between this opinion and NRCP 7.5A is addressed below.

² A version of SCR 42.1 was previously found in SCR 42(10). Effective as of September 24, 2002, SCR 42(10) was revised and readopted in its current form as SCR 42.1.

Utilization of a coworking office space by a nonresident Nevada attorney—the subject of this opinion—gives rise to the same concerns raised by the Committee in Formal Op. 19. However, as discussed below, those concerns either no longer exist or are sufficiently mitigated by utilization of a coworking office space that is designed to accommodate the legal industry.

One of the main concerns raised by the Committee in Formal Op. 19 involved a nonresident Nevada attorney not being available on short notice to appear, in person, for court hearings. The advent of modern technology has made it easier for attorneys to appear in court by alternative means, such as by remote video technology. As a practical matter, depending on the nonresident Nevada attorney's place of residence, the attorney may be closer in proximity to the courthouse than his or her counterpart who lives on the opposite side of the state. Although there may be practical difficulties for a nonresident Nevada attorney who has to appear, in person, in Nevada courts on short notice—a distinct possibility that should be discussed by the attorney with his or her client at the outset of the representation—myriad options exist to accommodate those situations.

The other main concern raised by the Committee in Formal Op. 19 involved a nonresident Nevada attorney being able to maintain client confidentiality when utilizing office space in a client's business in Nevada. In those hypothetical arrangements, the attorney could not guarantee that proper safeguards and measures could be implemented to satisfy the requirements of NRPC 1.6(a), in part because the employee who might accept service of process for the attorney or answer phone calls for the attorney would be employed by the client and not the attorney (or a third-party). By contrast, in a coworking office space, employees of the business do not work for any particular client of the attorney and may be trained to minimize, if not eliminate the flow of information between individuals working in the same space. Further, steps can be taken to appropriately secure documents and other information delivered to the shared office space for the attorney's attention.

A lesser concern raised by the Committee in Formal Op. 19 involved assurances that nonresident Nevada attorneys would be as familiar with local rules of practice as resident Nevada attorneys. All Nevada attorneys who agree to represent clients in Nevada courts must be knowledgeable of and familiar with applicable rules of practice in order to meet their obligations of competence and diligence under NRPC 1.1 and 1.3, respectively. Judges in Nevada and, if necessary, the Office of Bar Counsel are equipped to address instances where a nonresident Nevada attorney violates any local rules of practice while representing a client in litigation.

The final concern raised by the Committee in Formal Op. 19 involved the ability to serve a nonresident Nevada attorney with papers and pleadings without having to travel outside of Nevada. A coworking office space offers the ability for an attorney to receive service of process, whether by hand-delivery or via facsimile transmission, while working remotely from a different location. Further, most Nevada courts require attorneys to register for e-service through the court's electronic filing system, after which service in a case is accomplished via email to the attorney, without the additional need to hand-deliver or fax documents to the attorney.

Given the change in the legal practice landscape since the Committee issued Formal Op. 19 and how the COVID-19 pandemic has forced attorneys and judges to adapt to and rely upon technological advances, including working remotely from home, and upon review of advisory opinions issued by ethics committees in other states and the American Bar Association (ABA), the

Committee concludes that utilization of a coworking office space in Nevada by a nonresident Nevada attorney constitutes maintaining an office in Nevada for purposes of SCR 42.1.

Last year, the ABA issued an opinion addressing the virtual practice of law. *See* AM. BAR ASS'N, STANDING COMM. ON ETHICS & PROF'L RESPONSIBILITY, FORMAL OP. 498 (Mar. 10, 2021). The ABA concluded that the Model Rules of Professional Conduct, upon which the NRPCs are based, permit the virtual practice of law, saying, "[T]here is no requirement in the Model Rules that a lawyer have a brick-and-mortar office." Relevant to this opinion, the ABA offered guidance to lawyers in managing their ethical obligations when working outside of traditional, brick-and-mortar office environments. The opinion follows several opinions issued by ethics committees from other states around the country, discussing the benefits that flow from attorneys who do not operate out of traditional law offices but instead utilize shared office space as an extension of practicing remotely from another location. *See, e.g.*, PA. BAR ASSOC., COMM. ON LEGAL ETHICS & PROF'L RESPONSIBILITY, FORMAL OP. 2010-200 (Nov. 2011); OHIO BD. OF PROF'L CONDUCT, ADVISORY OP. 2017-05 (June 9, 2017); WASH. STATE BAR ASSOC., ETHICS ADVISORY OP. 201601 (Oct. 2016).³

Like other ethics committees, this Committee supports the ability of nonresident Nevada attorneys to work remotely from home while having access to and utilizing coworking office spaces located in Nevada. Such an approach harmonizes with the fact that lawyers more frequently communicate with their clients through electronic means, store documents in the cloud, and conduct banking over the internet.

Permitting a nonresident Nevada attorney to utilize a coworking office space in Nevada to satisfy the requirements of SCR 42.1(1) and thereby avoid having to take the additional steps outlined under SCR 42.1(2) will benefit clients and improve access to legal services. Attorney's fees are often based, in part, on the costs incurred by the attorney in maintaining his or her law office. An attorney who spends less on office overhead may be able to charge less to his or her client.

Notwithstanding the ability of a nonresident Nevada attorney to utilize a coworking office space to meet the requirements of SCR 42.1, there are a number of ethics issues that can arise. *See, e.g.*, KY. BAR ASS'N ETHICS OP. KBA E-417 (July 2001); D.C. BAR ETHICS OP. 303 (Feb. 21, 2001). Some, but not all of those issues are discussed below and must be addressed by the attorney.⁴

Confidentiality

As a general matter, an attorney has a duty to maintain as confidential all information that he or she learns in representing a client. NRPC 1.6(a). In a prior opinion, the Committee concluded that all information relating to the representation of a client is confidential, even if the

³ Although these ethics opinions, together with the ABA opinion, also discuss the benefits of maintaining a virtual law office, it is beyond the scope of this opinion whether a Nevada attorney may maintain a virtual law office under the NRPCs.

⁴ These same concerns would likewise need to be addressed by a resident Nevada attorney who utilizes a coworking office space to meet the requirements of SCR 42.1.

information is also a matter of public record. *See* STATE BAR OF NEV., STANDING COMM. ON ETHICS & PROF'L RESPONSIBILITY, FORMAL OP. 41 (June 24, 2009).

Initially, an attorney who utilizes a coworking office space in Nevada must be mindful of individuals overhearing conversations by the attorney when he or she is physically present in the building. Individuals in the shared office space must not be made privy to conversations relating to the attorney's representation of a client.

Next, an attorney must take steps to ensure that papers or pleadings that are dropped off or delivered to the coworking office space are not opened or read by persons who are not employed by the attorney. In those instances, the attorney could direct the employees of the coworking office space to set mail aside, without opening it, for the attorney to pick-up or forward the mail to the attorney at his or her primary residence or other location, and to give him or her timely notice whenever papers or pleadings are dropped off or delivered. Similarly, the attorney should not leave confidential client files in areas that may be accessed by others, such as shared filing cabinets.

Further, an attorney should direct employees at the coworking office space who field phone calls to request minimal information from callers when answering the phone. The employee should be trained to forward the call to the attorney immediately upon learning that the caller is wishing to speak with the attorney—without asking for details surrounding the purpose of the call.

Finally, an attorney who utilizes a desk, private office or conference room in a coworking office space should utilize effective IT security measures, including, but not limited to, a secure network connection, such as a virtual private network; anti-virus, anti-malware, and/or anti-fishing software; firewalls; and password-protected devices. In addition, the attorney should refrain from sending emails and accessing client documents over a publicly-shared Wi-Fi connection and consider using email and document encryption. The attorney should also continue to utilize his or her own private email account and document management software and avoid saving documents onto a network that may be accessed by others who utilize the shared office space.

Conflicts

An attorney owes a duty to avoid conflicts of interest. *Ryan v. Eighth Jud. Dist. Ct.*, 123 Nev. 419, 428 n.19, 168 P.3d 703, 709 n.19 (2007). Generally speaking, one attorney's conflict is automatically imputed to all other attorneys with whom the conflicted attorney is associated. *State v. Eighth Jud. Dist. Ct. (Zogheib)*, 130 Nev. 158, 161, 321 P.3d 882, 884 (2014).

A coworking office space may be utilized by different attorneys from different firms. A attorney should inform himself or herself of that fact and notify clients that the attorney is not associated with the other attorneys who utilize the same space. Failing to do so could result in an actual or prospective client believing (rightly or wrongly) that he or she has or is seeking to create an attorney-client relationship with all of the attorneys who utilize the space, giving rise to potential conflicts for each of the attorneys.

Communication

An attorney has a duty to explain a matter to a client “to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” NRPC 1.4(b). An attorney who utilizes a coworking office space should inform his or her client that the attorney is not physically present in the office each day and, as a result, will have to travel for appointments and, if applicable, court hearings.

Further, an attorney shall not make false or misleading communications about the attorney. NRPC 7.1. An attorney who lists a coworking office space on his or her business cards, letterheads, and website must notify clients that meetings can occur at that location by appointment only. This way, the attorney does not imply that he or she is available on a drop-in basis.

Supervision

An attorney has a duty to “make reasonable efforts” to ensure that non-attorneys “employed or retained by or associated with” the attorney shall act in a manner that is “compatible with the professional obligations of the [attorney].” NRPC 5.3(a). An attorney who utilizes a coworking office space must take appropriate steps to ensure that employees of the coworking office space understand and comply with the attorney’s ethical obligations where applicable, including, but not limited to, confidentiality obligations imposed upon the attorney. Further, because the attorney owes a duty to act “with reasonable diligence and promptness in representing a client,” NRPC 1.3, the employees must be trained to act within a reasonable period of time upon receiving papers or pleadings for the attorney so as to avoid delay in transmission of those documents to the attorney.

Safekeeping Property

An attorney must safeguard client property, which includes holding money received for a client in “one or more identifiable bank accounts designated as a trust account.” NRPC 1.15(a). An attorney who is admitted to practice in Nevada must utilize financial institutions approved by the State Bar of Nevada. SCR 78(1)(a). With that in mind, any nonresident Nevada attorney who utilizes a coworking office space in Nevada and handles money for a Nevada client must open and maintain a trust account at a State Bar of Nevada-approved financial institution, as opposed to a financial institution that may be acceptable for use by the attorney in the jurisdiction in which he or she maintains his or her primary residence.

Unauthorized Practice of Law

An attorney is prohibited from practicing law “in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.” NRPC 5.5(a)(1). Several state bar ethics committees and, more recently, the ABA have concluded that it does not constitute the unauthorized practice of law for an attorney to work remotely on matters for clients from a jurisdiction in which the attorney is not licensed to practice law, with certain limitations concerning how the attorney holds himself or herself out to the general public in the jurisdiction in which the attorney maintains his or her primary residence. *See, e.g.*, AM. BAR ASS’N, STANDING, COMM. ON ETHICS & PROF’L RESPONSIBILITY, FORMAL OP. 495 (Dec. 16, 2020); FL. BAR STANDING COMM. ON THE UNLICENSED PRACTICE OF LAW, OP. 2019-4 (May 20, 2021); PA. BAR ASSN., COMM. ON LEGAL ETHICS & PROF’L RESPONSIBILITY & PHILADELPHIA BAR ASSN., PROF’L GUIDANCE COMM.,

JOINT FORMAL OP. 2021-100 (Mar. 2, 2021); UTAH STATE BAR ETHICS ADVISORY OP. COMM., OP. 19-03 (May 14, 2019); MAINE PROFESSIONAL ETHICS COMM., FORMAL OP. 189 (Nov. 15, 2005). Nevertheless, the law in some jurisdictions may be such that an attorney who is not admitted in that jurisdiction is precluded from practicing law there, even if his or her practice is limited to matters for clients in the jurisdiction in which the attorney is admitted. With that in mind, a nonresident Nevada attorney must determine whether the law of the jurisdiction in which he or she is primarily residing considers it to be the unauthorized practice of law for the attorney to work remotely from that jurisdiction on Nevada matters for Nevada clients; and, if not, what steps must be taken by the attorney to avoid creating any appearance that he or she is admitted to practice in that jurisdiction.

* * * *

As a final point, the Committee clarifies that its opinion does not apply to Nevada attorneys who are employed by firms with offices in other jurisdictions, who are seeking to utilize a coworking office space in Nevada, without also having a traditional office located in Nevada, in order to satisfy the requirements of SCR 42.1. NRPC 7.5A requires multijurisdictional firms seeking to open an office in Nevada to certify that a Nevada attorney will maintain a “permanent office located within the State of Nevada” and serve as the “resident member of the firm.” NRPC 7.5(c)(5)(i). Based on the plain language of the Rule, a firm that employs a Nevada attorney would not meet these certification requirements solely by having access to a coworking office space in Nevada, particularly if the Nevada attorney is not a resident of Nevada.

In sum, a nonresident Nevada attorney who utilizes a coworking office space in Nevada meets the requirements of maintaining an office in Nevada for purposes of SCR 42.1, subject to the conditions and exception set forth in this opinion.⁵

ANSWER TO QUESTION TWO

No, an attorney admitted in Nevada but residing outside of Nevada and using a coworking office location in Nevada is not subject to the advertising filing requirements of NRPC 7.2A with regard to the attorney’s business cards, letterhead, and website.

DISCUSSION

NRPC 7.2A(a) states, in relevant part:

A lawyer or law firm shall file with the state bar (1) a copy or recording of all advertisements disseminated in exchange for something of value; and (2) written or recorded communications the lawyer causes to be disseminated for the purpose of advertising legal services. For the purpose of this Rule, websites are not considered to be advertisements subject to filing requirements.

⁵ In reaching this conclusion, the Committee cautions that the nonresident Nevada attorney must actually utilize the coworking office space in the course of his or her practice and not merely arrange for having access to it as a means to avoid the requirements of SCR 42.1(2).

Business cards, letterhead, and websites are not within the scope of the filing requirements imposed by the Rule. However, any paid advertisement or marketing material disseminated in Nevada is subject to the filing requirements of the Rule and, if a nonresident Nevada attorney includes the address of the coworking office space in Nevada in any paid advertisements or marketing materials, the attorney must indicate that in-person meetings are by appointment only.

CONCLUSION

Utilization of a coworking office space for the practice of an attorney admitted in Nevada but residing outside of Nevada constitutes maintaining an office in Nevada for purposes of SCR 42.1. An attorney admitted in Nevada but residing outside of Nevada and using a coworking office space in Nevada is not subject to the advertising filing requirements of NRPC 7.2A with regard to the attorney's business cards, letterhead, and website.

This opinion is issued by the Standing Committee on Ethics and Professional Responsibility of the State Bar of Nevada, pursuant to SCR 225. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, its Board of Governors, any person or tribunal charged with regulatory responsibilities, or any member of the State Bar.

AUTHORITIES

Nevada Rule of Professional Conduct 1.1
Nevada Rule of Professional Conduct 1.3
Nevada Rule of Professional Conduct 1.4
Nevada Rule of Professional Conduct 1.6
Nevada Rule of Professional Conduct 1.15
Nevada Rule of Professional Conduct 5.3
Nevada Rule of Professional Conduct 5.5
Nevada Rule of Professional Conduct 7.1
Nevada Rule of Professional Conduct 7.2A
Nevada Rule of Professional Conduct 7.5
Nevada Rule of Professional Conduct 7.5A
Nevada Supreme Court Rule 42.1
Nevada Supreme Court Rule 78

Ryan v. Eighth Jud. Dist. Ct., 123 Nev. 419, 168 P.3d 703 (2007)

State v. Eighth Jud. Dist. Ct. (Zogheib), 130 Nev. 158, 321 P.3d 882 (2014)

STATE BAR OF NEV., STANDING COMM. ON ETHICS & PROF'L RESPONSIBILITY,
FORMAL OP. 19 (June 16, 1994)

STATE BAR OF NEV., STANDING COMM. ON ETHICS & PROF'L RESPONSIBILITY,
FORMAL OP. 41 (June 24, 2009)

AM. BAR ASS'N, STANDING COMM. ON ETHICS & PROF'L RESPONSIBILITY,
FORMAL OP. 495 (Dec. 16, 2020)

AM. BAR ASS'N, STANDING COMM. ON ETHICS & PROF'L RESPONSIBILITY,
FORMAL OP. 498 (Mar. 10, 2021)

D.C. BAR ETHICS OP. 303 (Feb. 21, 2001)
FL. BAR STANDING COMM. ON THE UNLICENSED PRACTICE OF LAW, OP. 2019-4 (May 20, 2021)
KY. BAR ASS'N ETHICS OP. KBA E-417 (July 2001)
MAINE PROFESSIONAL ETHICS COMM., FORMAL OP. 189 (Nov. 15, 2005)
OHIO BD. OF PROF'L CONDUCT, ADVISORY OP. 2017-05 (June 9, 2017)
PA. BAR ASSOC., COMM. ON LEGAL ETHICS & PROF'L RESPONSIBILITY, FORMAL OP. 2010-200
(Nov. 2011)
PA. BAR ASSN., COMM. ON LEGAL ETHICS & PROF'L RESPONSIBILITY & PHILADELPHIA BAR
ASSN., PROF'L GUIDANCE COMM., JOINT FORMAL OP. 2021-100 (Mar. 2, 2021)
UTAH STATE BAR ETHICS ADVISORY OP. COMM., OP. 19-03 (May 14, 2019)
WASH. STATE BAR ASSOC., ETHICS ADVISORY OP. 201601 (Oct. 2016)