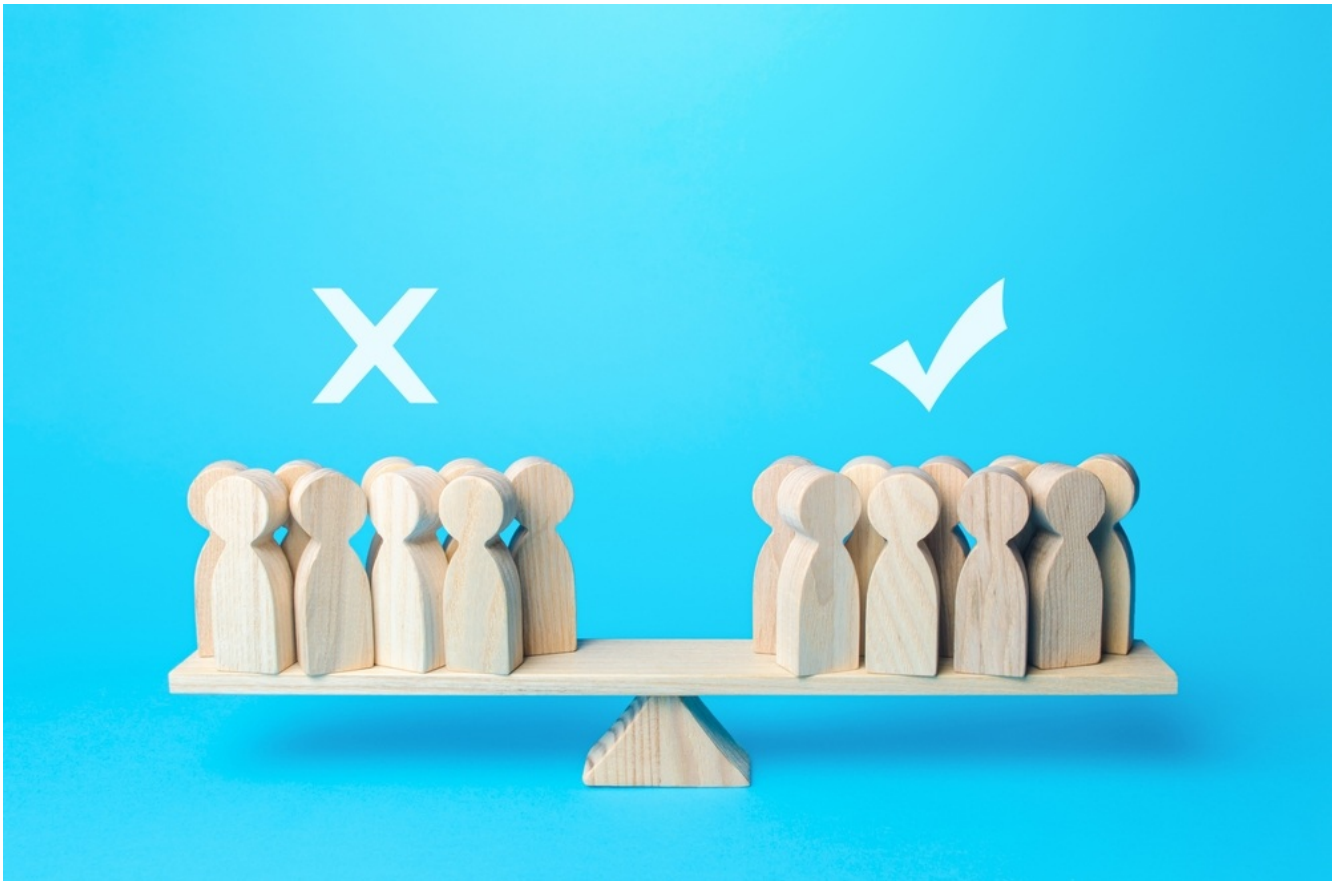


New ABA Opinion Examines Choice-of-Law Questions for State Ethics Rules



The American Bar Association's (ABA) Standing Committee on Ethics and Professional Responsibility has released an ethics opinion on lawyers admitted to practice in multiple jurisdictions and the potential differences in ethical requirements between those jurisdictions. The opinion outlines the governing rule of Model Rule of Professional Conduct 8.5, which states that a lawyer admitted to practicing in a particular jurisdiction is subject to disciplinary authority in that jurisdiction, regardless of where the lawyer's conduct occurred.

Model Rule 8.5(b) deals with choice-of-law questions and specifies that for conduct in connection with a matter pending before a tribunal, the jurisdiction rules in which the tribunal sits apply unless the tribunal's rules provide otherwise. For any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred apply unless the predominant effect of the conduct is in a different jurisdiction. Suppose a lawyer's conduct conforms to the rules of a jurisdiction where the lawyer reasonably believes the predominant effect of their conduct will occur. In that case, they will not be subject to discipline.

To determine the predominant effect of a lawyer's conduct, the opinion lists several factors that may be relevant, including the client's location, the location of the transaction, the substantive law applicable to the transaction, the lawyer's principal office location, where the lawyer is admitted, the location of the opposing party, and the jurisdiction with the most significant interest in the lawyer's conduct.

The opinion provides five scenarios of how Model Rule 8.5 applies, including fee agreements, law firm ownership, reporting professional misconduct, confidentiality duties, and screening for laterals. For example, the opinion addresses a scenario in which a lawyer-client relationship is formed in State X, the fee agreement is signed there, and the client resides in State X. Still, the litigation will happen in State Y, another state where the lawyer is licensed. The opinion concludes that the predominant effect of the lawyer's conduct is in State X, where the agreement was signed, where the lawyer's office is located, where they will research and prepare for the matter, and where the client resides. Therefore, State X's version of Model Rule 1.5 pertains to lawyer fees and would govern the fee agreement.

The opinion cautions that lawyers may want to identify in the fee agreement which jurisdiction's rules of professional conduct will apply to the fee agreement to avoid ambiguity.

This ethics opinion guides lawyers admitted to practice in multiple jurisdictions and helps clarify which jurisdiction's rules of professional conduct will apply to different scenarios. It emphasizes the importance of considering the location and other relevant factors in determining the predominant effect of a lawyer's conduct and which jurisdiction's rules of professional conduct will apply.