



ISBA Professional Conduct Advisory Opinion

Opinion No. 13-08
October 2013

Subject: Multijurisdictional Practice; Non-lawyer Assistants; Unauthorized Practice of Law

Digest: An out-of-state lawyer may practice immigration law in Illinois with the use of a properly supervised nonlawyer in Illinois who collects information to be used by the lawyer in filling out immigration forms.

Reference: Illinois Rules of Professional Conduct 5.3, 5.5, 7.1

Geoffrey C. Hazard, Jr. and W. William Hodes, *The Law of Lawyering*, (3d ed.), §§ 46.2, 46.10

8 C.F.R. §§ 1.2, 292.1(a)(1)

Sperry v. Florida ex rel. Florida Bar, 373 U.S. 379 (1963)

Virginia Legal Ethics Opinion 1856 (September 19, 2011)

Alaska Bar Association, Ethics Opinion 2010-1

ISBA Opinions 12-17 (July 2012), 684 (November 4, 1980), 286 (September 23, 1967)

Committee on Unauthorized Practice of Law of the District of Columbia Court of Appeals, Opinion 17-06 (July 21, 2006)

Philadelphia Bar Association, Ethics Opinion 2005-14 (August 2005)

FACTS

A lawyer who is not licensed in Illinois is about to establish a relationship with a nonlawyer in Illinois whereby the nonlawyer on an hourly basis as an employee or independent

contractor will work for the lawyer on immigration matters. The nonlawyer, under the lawyer's supervision, would meet with clients in Illinois and obtain information for use by the lawyer in the completion of immigration forms.

QUESTIONS

- I. Would the out-of-state attorney be in violation of the ethical constraints on practicing law in Illinois without a license?

- II. Would the nonlawyer be practicing law in Illinois without a license?

OPINION

I. While the proposed arrangement may or may not amount to the practice of law in Illinois by the out-of-state lawyer, it is permissible. For purposes of this opinion, the Committee presumes that it does constitute the practice of law.

RPC 5.5 addresses the topic of unauthorized practice of law, including the practice of law in Illinois by an out-of-state attorney:

(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.

* * * * *

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

* * * * *

- (2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

Since the nonlawyer assistant would be working in an established Illinois office under the supervision and on behalf of the non-admitted attorney, any functions that constitute the practice of law by the non-admitted attorney are forbidden by Rule 5.5(b)(1), unless an authorized exception applies. In this case, there is an explicit exception provided by Rule 5.5(d)(2): federal practice.

Is the practice of immigration law within that exception? “Particularly with respect to

federal law authorization and federal pre-emption, it is important to note that the mere fact that a body of law is ‘federal’ does not by itself mean that a local license is unnecessary; there must also be a sufficiently clear statutory or regulatory authorization for such practice without a local license.” Geoffrey C. Hazard, Jr. and W. William Hodes, *The Law of Lawyering* (3d ed.), § 46.2, p. 46-6.1 (2013 supplement).

Under federal law, a lawyer authorized to practice immigration law may be a member of the bar of any state. 8 C.F.R. §§ 1.2, 292.1(a)(1). There is no requirement that such lawyer be a member of the bar of the state in which he or she practices immigration law, and the imposition of such a requirement by a state would be in contravention of the Supremacy Clause of the U.S. constitution. *Sperry v. Florida ex rel. Florida Bar*, 373 U.S. 379 (1963) (state licensing board may not overrule federal determination that person is qualified to perform certain functions, as in the case of a nonlawyer in Florida practicing before the U.S. Patent and Trademark Office).

In Virginia Legal Ethics Opinion 1856 (“Scope of Practice for Foreign Lawyer in Virginia,” September 19, 2011), a wide-ranging discussion of the federal practice exception included immigration law as an example of a type of practice not requiring admission to the Virginia bar. The question was directly posed to the Alaska Bar Association, which answered as follows: “Assuming that the lawyer clearly advises his clients that he is not an Alaska lawyer and avoids advising regarding legal issues outside of immigration law, the lawyer may maintain a physical office in Alaska.” Ethics Opinion 2010-1 (April 27, 2010).

A non-admitted lawyer planning to practice immigration law in Illinois with the use of a nonlawyer assistant should take care that both the lawyer and the assistant do not state or imply that the lawyer is admitted in Illinois. Rule 5.5(b)(2). The lawyer’s letterhead, business cards, website and advertising materials, if they show any point of contact within Illinois, should state that the lawyer is not admitted in Illinois, with a practice limited to immigration matters. Otherwise, the public would receive the impression that the lawyer is generally admitted to practice in Illinois. Rule 7.1 bars misleading communications about a lawyer. See ISBA Opinion 12-17 (July 2012) (advertisements and solicitations directed to potential Illinois clients, by lawyer not admitted in Illinois, misleading if lawyer’s jurisdictional limitations not disclosed clearly); Committee on Unauthorized Practice of Law of the District of Columbia Court of Appeals, Opinion 17-06 (July 21, 2006) (lawyers based in D.C. with federal practice, but not members of the D.C. bar, must disclose non-admission and limitation of practice in business documents); Philadelphia Bar Association, Ethics Opinion 2005-14 (August 2005) (“Rules 7.1 and 7.5b require that the inquirer note on all her letterhead, office signage, business cards and on/in any other publicity or advertising vehicles, that she is admitted only in the state to which she is licensed, and that her practice in Pennsylvania is strictly limited to Immigration and Naturalization.”)

Of utmost importance is that the lawyer in the proposed arrangement not stray from the immigration niche that permits practicing without an Illinois license. “For example, an unlicensed (out-of-state) lawyer properly practicing immigration law in a locale could not hold himself out as available to practice law more generally, or agree to provide advice—even to an immigration client—on local matters, or draft legal documents founded on local law principles, even if those documents might be helpful in resolving some immigration law dispute.” Hazard &

Hodes, *Law of Lawyering*, § 46.10, p. 46-33 (2010 supplement).

II. The lawyer also should see to it that the assistant engaged to meet with clients and take information is adequately supervised, as required by Rule 5.3(b): “With respect to a nonlawyer employed or retained by or associated with a lawyer: . . . a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer.”

The Rules of Professional Conduct recognize that lawyers utilize the services of nonlawyers to assist them in the practice of law. Rule 5.3(b), quoted in pertinent part above, governs a lawyer’s responsibilities regarding nonlawyer assistants. The essence of those responsibilities is supervision.

Under the facts as stated in the present inquiry, the nonlawyer will work under the supervision of the lawyer, meeting with clients and taking information to be used by the lawyer in the practice of immigration law. Such activity, as long as it is duly supervised, is permissible and therefore should not be considered to be the unauthorized practice of law. It has long been recognized that paralegals and other nonlawyer assistants performing lawyer-like functions under supervision are not engaged in the unauthorized practice of law. ISBA Opinion 684 (November 4, 1980) (layman rendering collective bargaining services); ISBA Opinion 286 (September 23, 1967) (lay investigator negotiating settlements). Under the circumstances presented in this inquiry, the supervising lawyer would not be guilty of assisting in the unauthorized practice of law.

The present inquiry does not detail the steps to be taken in exercising the required supervision, and the Committee is not inclined to try to manage the inquiring lawyer’s practice in that regard. Of particular concern in the immigration area would be any efforts of the nonlawyer assistant to solicit clients in violation of lawyer advertising and solicitation prohibitions. Suffice it to say that supervision can be a challenge when an out-of-state lawyer conducts business with the use of an in-state assistant. While that is not a reason to condemn the proposed arrangement, the Committee stresses that the inquiring lawyer carefully consider the responsibilities imposed by Rule 5.3(b).

Professional Conduct Advisory Opinions are provided by the ISBA as an educational service to the public and the legal profession and are not intended as legal advice. The opinions are not binding on the courts or disciplinary agencies, but they are often considered by them in assessing lawyer conduct.

© Copyright 2013 Illinois State Bar Association