



ISBA Professional Conduct Advisory Opinion

Opinion No. 14-04
May 2014

Subject: Advertising and Solicitation; Unauthorized Practice of Law

Digest: Solicitation of personal injury cases within Illinois by a lawyer not admitted to practice in Illinois is not, in and of itself, a form of unauthorized practice of law, however, all solicitations must comply with all restrictions imposed by the Illinois Supreme Court on lawyer advertising, and must contain all information necessary to prevent the recipient from being misled.

Ref.: *In re Desilets*, 291 F.3d 925 (6th Cir. 2002);

Kennedy v. Bar Assoc'n. of Montgomery County, Inc., 316 Md. 646 (1989);

Illinois Rules of Professional Conduct, Rules 5.5, 7.1, 7.2, 7.3, 7.4, 7.5, 8.5;

ABA Model Rule 7.1

FACTS

Lawyer A is licensed to practice law only in a state other than Illinois. He claims extensive experience in representing plaintiffs in mass disaster tort litigation. From his office in the state of licensure, he mails packets of material advertising his law firm's personal injury litigation services, with letters of solicitation, to persons who were injured in major disasters in Illinois and other states. When representing claimants in a state other than his state of licensure, he retains local counsel. No Illinois resident has responded to his mailings.

QUESTIONS

1. Does Lawyer A's solicitation of Illinois clients constitute the unauthorized practice of law in Illinois?
2. Do Lawyer A's solicitations violate the Illinois Rules of Professional Conduct?

OPINION

I.

Because the ability of lawyers licensed in other states to practice in Illinois on a temporary basis has been greatly broadened by the adoption of 2010 IRPC Rule 5.5, the solicitation described in the fact pattern itself likely wouldn't constitute the unauthorized practice of law, although it may still violate other IRPC related to advertising. Although Comment 21 states that paragraphs (c) and (d) do not authorize communications advertising legal services to prospective clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions, whether and how lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.

Specifically, 2010 IRPC Rule 5.5(c) now allows a lawyer who is admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, to provide legal services on a "temporary basis" in this jurisdiction under the following circumstances:

- 1) [when they] are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
- 2) [when they] are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
- 3) [when they] are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission;
- 4) [when they] are not within paragraphs (c)(2) or (c)(3) above and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

These provisions are especially broad when considered in light of Comment 14 which gives guidance on when the representation "arises out of or is reasonably related to the lawyer's practice in the jurisdiction in which he is licensed." Specifically, the Comment provides that when the client has been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted; when the matter, although involving other jurisdictions, may have a significant connection with that jurisdiction; when significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions. *In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally uniform, foreign, or international law.* (Emphasis supplied).

Although 2010 IRPC Rule 5.5(c) applies only to practicing in Illinois on a "temporary basis," Comment 6 provides that services may be "temporary" even though the lawyer provides

services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation. Conversely, Comment 4 provides that a lawyer can establish a continuous and systematic presence even if not physically present in the state. Whether or not advertising in Illinois constitutes a “continuous and systematic presence” such that the lawyer’s practice is no longer “temporary” within the meaning of Rule 5.5(c) and constitutes the unauthorized practice of law is a question that has not been addressed, nor does the Committee express an opinion on that issue herein. In addition, not having reviewed the solicitation at issue, the Committee does not have enough information to opine on whether it specifically would likely constitute the unauthorized practice of law.

Finally, any lawyer who practices in Illinois pursuant to Rule 5.5(c) or (d) submits him/herself to the jurisdiction of the disciplinary authority in this state. 2010 IRPC Rule 5.5, Cmt. 19; Rule 8.5(a).

II.

Even if A's solicitation letters do not constitute the practice of law within Illinois, they must meet the requirements imposed on legal advertisements set forth in Rules 7.1-7.5 of the Illinois Rules of Professional Conduct.

Of particular note, Rule 7.1, which is identical to the counterpart ABA Model Rule, provides, “A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.”

We have not seen A's letter of solicitation. By sending such a letter, however, A necessarily implies that he is eligible and qualified to undertake the representation. In order to comply with Rule 7.1, the letter must disclose the jurisdiction(s) in which A is licensed to practice and, by implication, that A is not licensed to practice law in Illinois. While this fact is not necessarily determinative of whether A can, in fact, represent Illinois residents in mass tort litigation in light of the recent changes to Rule 5.5, omission of this information would likely make the statement, considered as a whole, materially misleading given that A’s ability to represent Illinois residents is dependent upon the specific facts of the case.

In addition, Rule 7.3(c) requires that every communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words “Advertising Material” on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication unless the recipient is a lawyer or has a family, close personal or prior professional relationship with the lawyer.

Further, the lawyer’s act of offering to provide legal services in Illinois would subject him or her to the disciplinary authority of Illinois pursuant to Rule 8.5(a) which reads, in pertinent part, “A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides *or offers to provide* any legal services in this jurisdiction. (Emphasis supplied).

Finally, the fact that A hires local counsel would not be sufficient to satisfy the requirement that the solicitation not be misleading or omit a material fact. In addition, the fact that no one has responded to A's solicitation is irrelevant to the analysis of whether the advertisement complies with the Illinois Rules of Professional Conduct.

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