



ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in January 2010. Please see the 2010 Illinois Rules of Professional Conduct 5.5(c)(4) and Comment [13]. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

Opinion No. 02-04 April, 2003

Topic: Unauthorized practice of law

Digest: An attorney licensed in State X who negotiates, from his office in State X, his clients' claim for medical matters in State Y, where no lawsuit has been filed and where the attorney is not licensed, does not engage in the unauthorized practice of law, and need not associate with an attorney in State Y to conduct this negotiation.

Ref.: Illinois Rules of Professional Conduct 5.5
ISBA Advisory Opinion Nos. 92-15; 94-5; 97-03
Chicago Bar Ass'n v. Quinlan & Tyson, Inc., 34 Ill.2d 116, 214 N.E.2d 771 (1966)
In re Howard, 188 Ill.2d 423, 721 N.E.2d 1126 (1999)
In re Discipio, 163 Ill.2d 515, 645 N.E.2d 906 (1994)

FACTS

A lawyer licensed in Illinois and State X moves out of Illinois and begins practice in State X, while maintaining his Illinois law license and registration. An Illinois couple, known to the attorney, has an automobile accident in State Y, where the attorney is not licensed to practice; however the couple is treated medically in Illinois where the attorney maintains current license

registration to practice law.

QUESTIONS

May the attorney settle the couple's claim for medical matters in State Y without associating with an attorney in State Y? Attorney recognizes that whether an attorney has violated the unauthorized practice of law provisions in State Y is governed by the laws of State Y, but queries whether Illinois Rules of Professional Conduct, Rule 5.5(a) is violated, regardless of State Y's determination.

Also, would any violation of the Illinois Rules of Professional Conduct, Rule 5.5 be alleviated by association with a State Y licensed attorney?

OPINION

The principal rule governing the unauthorized practice of law is Rule 5.5 of the Illinois Rules of Professional Conduct.

Rule 5.5. provides:

A lawyer shall not:

- (a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction;
- (b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

In determining whether certain conduct constitutes the practice of law, the courts look to the character of the acts themselves. *Chicago Bar Ass'n v. Quinlan & Tyson, Inc.*, 34 Ill.2d 116, 120, 214 N.E.2d 771, 774 (1966). If those acts require legal expertise or knowledge or more than ordinary business intelligence, they constitute the practice of law. *Id.*; *In re Howard*, 188 Ill.2d 423, 438, 721 N.E.2d 1126, 1134 (1999); *In re Discipio*, 163 Ill.2d 515, 523, 645 N.E. 2d 906, 910 (1994). See also *Rotunda, Professional Responsibility* 123 (3d ed) (noting that in general, the courts have held that a person practices law when the person applies the law to the facts of a particular case). While the charge of unauthorized practice of law typically relates to legal work performed by non-attorneys, the Committee recognizes that it also applies to attorneys licensed in other states who perform legal services within the foreign jurisdiction without being licensed or otherwise authorized to do so.

In ISBA Opinion No. 92-15, the Committee considered whether it is the unauthorized practice of law for an out-of-state attorney, not licensed in Illinois, to work full-time for an Illinois municipality as a personnel officer. The Committee concluded that it depended on the nature of the activity in which the out-of-state attorney engaged. For example, it would be the unauthorized practice of law for the individual to draft contracts without consultation with or the

approval of the municipal attorney, yet the mere negotiation of a labor contract with an employee union would not constitute the unauthorized practice of law.

In the fact inquiry presented, the Committee assumes that no lawsuit has been filed in State Y, and that the only services the attorney would provide would be to negotiate, from the attorney's office in State X, the couple's claim for medical matters in State Y. The Committee also assumes that the attorney is not habitually engaged in such negotiations, and that the attorney is merely doing so in this instance to assist a couple known to him, as set forth in the facts. Under this scenario, it is the Committee's opinion that while the attorney may be engaging in the practice of law, it is not the "unauthorized" practice of law in State Y because the attorney is conducting the negotiation from State X, where he is licensed to practice law. Accordingly, under the facts presented, the Committee believes the attorney may settle the couple's claim for medical matters in State Y without associating with an attorney in State Y, and that doing so does not violate Rule 5.5(a) of the Illinois Rules of Professional Conduct.

To the extent the attorney leaves State X, where he is licensed, and enters State Y to conduct the negotiation, the issue becomes less clear. See *Lozoff v. Shore Heights, Ltd.*, 66 Ill.2d 398, 362 N.E.2d 1047 (1977) (holding that a lawyer licensed only in Wisconsin who had rendered legal services in connection with an Illinois real estate transaction had engaged in the unauthorized practice of law and could not recover fees).

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