



ISBA Professional Conduct Advisory Opinion

Opinion No. 20-08
October 2020

Subject: Law Firms; Multijurisdictional Practice; Nonlawyer Assistants; Unauthorized Practice of Law.

Digest: An out-of-state lawyer who is applying for admission in Illinois may work as a lawyer, from an office in Illinois, on cases in state and federal courts to which she is already admitted to practice, as long as those state and federal jurisdictions permit such practice. The lawyer also may work on Illinois legal matters under appropriate supervision, with disclosure that she is not admitted to practice in Illinois.

References: Illinois Rules of Professional Conduct 5.3, 5.5 and 8.5
ISBA Advisory Opinion 20-01 (May 2020)

FACTS

A litigation firm located in Illinois wishes to hire an out-of-state attorney to handle (1) matters pending in state and federal courts in which she is licensed to practice and (2) Illinois matters in which her role will be to support the firm's Illinois-licensed attorneys, but not to make an appearance in court herself. She is moving to Illinois and her sole law office will be with the firm she is joining. The attorney is not licensed in Illinois but will apply for admission here. When the lawyer works on Illinois matters, she will clearly disclose to the firm's clients and the public that she is not licensed in Illinois. She will be listed on the firm's webpage as a lawyer admitted in another state and will clearly state in all correspondence her state and federal bar admissions. She will be an associate-level attorney; all her direct supervisors and the firm's partners will be Illinois-admitted lawyers.

QUESTION

Does the described arrangement constitute the unauthorized practice of law in Illinois?

DISCUSSION

In the scenario described, the out-of-state lawyer will be working in two capacities: as a lawyer with respect to matters in jurisdictions in which she is licensed to practice, and as a legal assistant with respect to Illinois matters. Both roles are permissible under the Illinois Rules of Professional Conduct.

Regarding her practice in jurisdictions in which she is admitted, guidance is provided by Illinois Rule of Professional Conduct 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law), which states in relevant part as follows:

(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.

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(d) A lawyer admitted in another United States jurisdiction...and not disbarred or suspended from practice in any jurisdiction...may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

* * * * *

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

Rule 5.5(b)(1) forbids an out-of-state lawyer to practice out of an Illinois office, unless an exception applies. In the present case, there is an applicable exception under Rule 5.5(d)(2), which permits such a lawyer to conduct a practice that is authorized by the rules of another jurisdiction.

The lawyer’s work on out-of-state and federal cases is permissible under Rule 5.5(d)(2) as long as she is authorized by those jurisdictions to practice from an Illinois office. She will need to consult the rules of those bars to which she is currently admitted; we presume that she will follow applicable court rules and regulations in that regard. We further note that under Rule 8.5(a) she is subject to discipline by Illinois authorities as well as by the authorities of those other jurisdictions.

Unlike some other states, Illinois does not permit an out-of-state lawyer to practice in its courts pending admission to the bar. However, Rule 5.3 (Responsibilities Regarding Nonlawyer Assistance) provides that lawyers may employ nonlawyer assistants in their practice. While this incoming associate is in fact a lawyer, her status at the firm will be analogous to that of a nonlawyer assistant, such as a paralegal. As recently determined in ISBA Advisory Opinion 20-

01 (May 2020), an associate awaiting admission to the Illinois bar should be permitted “to perform many of the services normally performed by licensed first year associates.” Since the associate in question will at all times be subject to the supervision of Illinois lawyers, as required by Rule 5.3, she may work on Illinois matters.

Finally, since the firm will disclose her bar admission status, it will be in compliance with Rule 5.5(b)(2).

CONCLUSION

Under the facts presented, the law firm and the lawyer will not be engaged in the unauthorized practice of law in Illinois. It is the Committee’s opinion that the described arrangement falls within the exceptions provided by Rule 5.5 for out-of-state lawyers practicing in an Illinois office, and also complies with Rule 5.3 regarding the employment of nonlawyer assistants.

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