

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 89-37

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[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

SYLLABUS: The Code of Professional Responsibility does not prohibit an attorney admitted in another state from being listed on an Ohio law firm's letterhead provided the jurisdictional limitations are indicated. An attorney admitted in another state and awaiting admission to the Ohio bar is not permitted to hold himself or herself out as an attorney licensed to practice law in Ohio. An attorney licensed to practice in another state and waiting to be admitted in Ohio is not permitted to give legal advice directly to clients in Ohio even if the jurisdictional limitations are disclosed. This opinion does not address the pro hac vice situation.

OPINION: We have before us your request for an opinion concerning an attorney admitted in another state who is joining your firm and will be sitting for the next Ohio Bar examination. You ask first whether, before he is admitted to the Ohio Bar, his name may appear on your letterhead with an asterisk indicating he is admitted only in another state and second, whether he may give legal advice directly to clients if they are notified he is admitted in Florida Only. Third, whether he should be compensated based on legal fees billed and/or collected by the firm or on a salary basis.

The listing, on a law firm's letterhead, of lawyers admitted in other states while waiting to be admitted in Ohio is permitted under the Code of Professional Responsibility provided the listings indicate the jurisdictional limitations. Code of Professional Responsibility, DR 2-102 (D).

The Ohio Revised Code provides that a person must be admitted to the bar by order of the Ohio Supreme Court in order to practice as an attorney or counselor, or to commence, conduct, or defend any action or proceeding in which he or she is not a party. Ohio Rev. Code §4705.01 (Baldwin, 1985). Furthermore, DR 3-101(B) prohibits a lawyer from practicing law in a

jurisdiction where to do so would be in violation of the regulations of that jurisdiction. "Authority to engage in the practice of law conferred in any jurisdiction is not per se a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where he is not permitted by law or court order to do so." Code of Professional Responsibility, EC 3-9.

What constitutes the practice of law has not been effectively defined by either courts or commentators. In this regard, EC 3-5 states that it is neither necessary nor desirable to attempt to formulate a single, specific definition of what constitutes the practice of law. In the related topic of multistate practice, the American Bar Association has acknowledged that,

[a] lawyer admitted in one jurisdiction may conduct incidental transactions in another. The point at which such activity becomes the practice of law in the other state is a matter of state law and varies from state to state. Formulating guidelines on the scope of permissible activity is extremely difficult. Commentators have characterized this area of permissible activity as a "no man's land" where contradiction abounds, and have warned that multistate practice must be at the lawyer's individual risk. ABA Annotated Model Rules of Professional Conduct, 290 (1984) (citations omitted).

In a recent Ohio disciplinary case, an Ohio lawyer was suspended from the practice of law for six months for representing clients in a jurisdiction in which he was not admitted to practice. Office of Disciplinary Counsel v. Scuro, 36 Ohio St.3d 205 (1988). The respondent, Mr. Scuro, had represented over thirty clients in cases before a court in which he was not admitted to practice law. Id.

Setting aside the pro hac vice situation, we conclude that a lawyer admitted in another state, awaiting admission to the Ohio bar, may not give legal advice directly to Ohio clients before his formal admission to the Ohio Bar. This would be true even if the clients within this state are notified of the

lawyer's jurisdictional limitation. In addition, the practice of law

is not limited to appearing in court, or advising and assisting in the conduct of litigation, but embraces the preparation of pleadings, and other papers incident to actions and special proceedings, conveyancing, the preparation of legal instruments of all kinds, and the giving of all legal advice to clients. Black's Law Dictionary 1055 (5th ed. 1979).

Your third question relates to the proper way to compensate an out of state lawyer working in your office who is waiting to take Ohio's bar exam. This is a policy decision only your firm can make and is not addressed in the Code of Professional Responsibility. In our view, the prohibition on sharing fees with a non-lawyer under DR 3-102 is not applicable here. However, the out of state lawyer's compensation should not give the appearance that the lawyer in question is admitted to practice law in Ohio.

In conclusion, it is our opinion that a law firm's letterhead may include the name of a lawyer admitted in another state if the listing includes the jurisdictional limitations. A lawyer admitted in another state awaiting admission in Ohio is not permitted to practice law in Ohio. In our view, a lawyer from another state waiting for admission to Ohio's bar may not advise clients directly even when the clients are informed of the jurisdictional limitation. An Ohio law firm's compensation to an out of state lawyer awaiting admission in Ohio must not give the impression that the lawyer is admitted in Ohio. Again, this opinion does not address the pro hac vice situation.

This is an informal, non-binding advisory opinion, based upon the facts presented and limited to questions arising under the Code of Professional Responsibility.