

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 90-12

Issued August 17, 1990

Withdrawn by Adv. Op. 2018-02

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]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: An out-of-state law firm does not engage in the unauthorized practice of law by representing out-of-state lending institutions regarding loans made to persons and entities in Ohio secured by property located in Ohio. The law firm may prepare the loan documents, negotiate the terms of the agreement with the borrower's counsel, and offer legal advice to the lending institution regarding Ohio law. The law firm may also represent the lending institution in Ohio at the loan closing. This Board cannot address any issues regarding the legal liability stemming from this type of practice.

OPINION: We have before us your request regarding the unauthorized practice of law. Your firm represents clients located in the jurisdictions where your lawyers are licensed to practice law. The lending institutions make loans to persons and entities within Ohio secured by property located in Ohio. You specifically inquire whether you may prepare loan documents in your offices, negotiate the terms of the agreements with the borrower's counsel, give legal advice to the lending institution regarding Ohio law and travel to Ohio for the loan closing.

The Code of Professional Responsibility discourages us from placing unreasonable territorial limitations upon the right of a lawyer to handle the legal affairs of his client or upon the opportunity of a client to obtain the services of a lawyer of his choice in all matters. Code of Professional Responsibility, EC 3-9. Moreover, Ethical Consideration 8-3 states that clients and lawyers should not be penalized by undue geographical restraints upon representation in legal matters, and the bar should improve licensing, reciprocity, and admission procedures consistent with the needs of modern commerce. However, a lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction. Code of Professional Responsibility, DR 3-101 (B).

Based upon the facts presented, we believe that you would not be engaging in the unauthorized practice by representing the lending institutions regarding Ohio based loans and property. However, you must make full disclosure to your clients that you are not licensed to practice in Ohio. You should inform the client of the limitations on your practice including that your pro hac vice admission would be required in order to appear in any Ohio tribunal. See, e.g., Leis v. Flynt, 439 US 438 (1979).

One commentator has stated that no distant state has the power to prohibit an out-of-state lawyer from advising a client about the distant state's law. Wolfram, Modern Legal Ethics, 867 (1986). Further, an out-of-state lawyer may prepare a document intended to be given legal effect in Ohio without risking disciplinary action provided the lawyer complies with the competency requirement under Canon 6 of the Code of Professional Responsibility. As Professor Wolfram points out in his treatise, when an out-of-state lawyer travels to Ohio the in-state law practice is tolerated if the client is a regular client and "either (1) the lawyer's presence is an isolated occurrence and the work is not extensive in duration or (2) the in-state practice is more extensive but is 'incidental' to advising a client on a multi-state problem." Id. (citations omitted). However, a persistent practice in Ohio would be considered the unauthorized practice of law. Wolfram, Modern Legal Ethics, 868 (1986).

Therefore, it is our opinion and you are so advised that an out-of-state firm would not be engaging in the unauthorized practice of law by representing out-of-state lending institutions regarding loans made in Ohio and secured by property located in Ohio.

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