



Ohio Board of Professional Conduct

OPINION 2018-2

Issued June 8, 2018

Withdraws Opinion 90-12

Out-of-State Lawyer Representing Lending Institution

SYLLABUS: An out-of-state lawyer who is admitted and in good standing in another United States jurisdiction may represent, on a temporary basis, an out-of-state lending institution concerning loans made to persons and entities in Ohio secured by real property located in Ohio. The out-of-state lawyer may prepare loan documents, negotiate the terms of the agreement with the borrower or counsel, and attend the loan closing in Ohio without engaging in the unauthorized practice of law.

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Ohio Board of Professional Conduct

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APPLICABLE RULES: Prof.Cond.R. 5.5

QUESTION PRESENTED:¹ Whether an out-of-state lawyer, not admitted to practice in Ohio, may prepare loan documents for a loan secured by Ohio property, negotiate the terms of the loan agreement with the borrower or borrower's counsel, and attend the loan closing in Ohio.

OPINION:

Under the Rules of Professional Conduct, an out-of-state lawyer may not establish an office or other systematic or continuous presence, or hold out to the public that he or she is admitted to practice law in Ohio. Prof.Cond.R. 5.5(b). However, the rules permit a lawyer, admitted and in good standing in another United States jurisdiction, to provide

¹ The question presented in this advisory opinion is the same or substantially similar to the question presented in Adv.Op. 90-12.

certain types of legal services on a “temporary basis” in Ohio through the application of one or more enumerated safe harbors. Prof.Cond.R. 5.5(c)(1)-(4).

One safe harbor applies to transactional legal services and permits an out-of-state lawyer to engage in “nonlitigation activities that arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice.” Prof.Cond.R. 5.5(c)(4). This safe harbor provides some latitude for transactional lawyers to provide legal services for established clients in jurisdictions in which they are not formally licensed. ABA Report to the House of Delegates, No. 201(B) (August, 2002). Despite this safe harbor, out-of state lawyers should fully inform their clients that they are not licensed to practice in Ohio and that pro hac vice admission would be required in order to appear in any Ohio tribunal in the event of litigation.

A determination of whether a lawyer’s out-of-state services “arises out of or are reasonably related” to the lawyer’s practice in his or her licensing jurisdiction is aided by the consideration of several factors enumerated in Prof.Cond.R. 5.5, cmt. [14]. The comment states that, *inter alia*, facts demonstrating that the client is previously or currently represented by the lawyer, that the client has substantial contacts with the jurisdiction in which the lawyer is licensed, or that significant aspects of the transaction involve the law of the lawyer’s jurisdiction, evidence the required relationship of the out-of-state lawyer with his or her home jurisdiction. *See also Restatement (Third) of the Law Governing Lawyers*, §3 cmt. (e) (Am. Law Inst. 2000). Here, if the out-of-state lawyer’s services are provided to a current client, the transaction relates to the client’s out-of-state business, and significant aspects of the work are conducted in the jurisdiction of licensure, then the representation is “arising out of or are reasonably related” to his or her practice in the licensing jurisdiction.

When applying the rule’s “temporary basis” requirement, there is no single test to determine whether an out-of-state lawyer’s services in another jurisdiction are temporary rather than permanent. Prof.Cond.R. 5.5, cmt. [6]. However, the term is broadly construed to include legal services provided on a recurring basis or even over an extended period of time. *Id.* In addition, the use of the term “temporary basis” in the larger context of Rule 5.5 implies a temporal limitation that is different from the establishment of an office or other systematic or continuous presence in the jurisdiction. The legal services ordinarily required to conduct a loan transaction secured by real

property can typically be completed by a lawyer in a relatively short timeframe and therefore can reasonably be viewed as being provided only on a “temporary basis.”

Based on the foregoing, if the lending institution is a client of the lawyer, and the lawyer is admitted and in good standing in his or her licensing jurisdiction, then the lawyer may provide legal services on a temporary basis on behalf of the out-of-state institutional client. Specifically, the out-of-state lawyer may engage in legal services necessary to undertake the representation, including drafting the lending agreement in accordance with federal or state regulations in Ohio or his or her licensing jurisdiction, as well as negotiating the terms of the agreement with the borrower or counsel and attending the loan closing.

CONCLUSION: A lawyer admitted and in good standing in another jurisdiction, may represent an out-of-state lending institution in conjunction with a loan closing on property located in Ohio without the need to retain local counsel. These services may include the drafting of loan documents, negotiation with the borrower, and attendance at the loan closing held in Ohio. Because the typical legal services required to complete a loan transaction are usually of a short duration, the services meet the temporal limitation of the rule as being provided on a temporary basis. An out-of-state lawyer engaged in transactional legal services authorized under Prof.Cond.R. 5.5(c)(4) is not engaged in the unauthorized practice of law in Ohio.