

The Supreme Court of Ohio

BOARD ON THE
UNAUTHORIZED PRACTICE OF LAW
65 SOUTH FRONT STREET, COLUMBUS, OH 43215-3431

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April 21, 2005

Jill Snitcher McQuain, Esq.
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Dear Ms. Snitcher McQuain:

Thank you for your inquiry submitted to the Board on the Unauthorized Practice of Law regarding the practice in Ohio by out-of-state attorneys in light of the Court's recent decision in Disciplinary Counsel v. Alexicole.¹

Your inquiry raised the following question: Does an attorney licensed to practice law in another state commit the unauthorized practice of law in Ohio by appearing and filing pleadings on behalf of an out-of-state corporation and its Ohio based employees in a securities arbitration proceeding scheduled to take place in Ohio? You further distinguished your question from the facts set forth in Alexicole, where an out-of-state *unlicensed* individual represented an Ohio resident in a securities arbitration.

Based upon our research, no court in Ohio has ever considered the specific question you have raised. A number of parties who have contacted the Board have suggested various methods by which an *out-of-state licensed attorney* may practice before an arbitration panel in Ohio. In its original prayer for relief in Alexicole, relator Disciplinary Counsel recommended the respondent become licensed in Ohio, or another jurisdiction, and register under the Rules for the Government of the Bar. However, the only method available short of seeking admission with or without examination is

¹ All references made herein to Alexicole are to the record below and the decision set forth in the Board's Final Report, Case No. UPL 02-06.

registration for corporate status, which would only be useful for counsel performing “legal services in Ohio solely for a nongovernmental Ohio employer, as long as the attorney is a full-time employee of that employer.” See Gov. Bar R. VI, §4. Other parties have suggested a strained application of *pro hac vice* admission. The Board is also generally aware that the common law concept of *pro hac vice* admission is not particularly applicable to arbitration practice, unless and until an arbitration decision is appealed to a court of law.

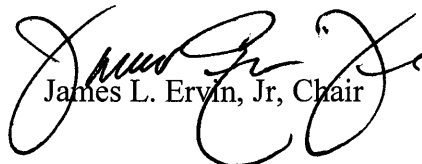
In Alexicole, the complaint and the subsequent decision of this Board were contained to a particular set of facts. Specifically, it can be discerned from the record that respondent Bandali Dahdah, a principal of Alexicole, Inc., was not licensed as an attorney in any state, district, territory or other jurisdiction of the United States when the acts complained of were committed. Despite the fact the rules of the National Association of Securities Dealers (NASD) do not require a party to be represented by an attorney, the Board found that Dahdah and Alexicole, Inc. had been engaged in the unauthorized practice of law, most notably due to the lack of a license to practice law in Ohio.

Private arbitration raises a number of multijurisdictional practice issues due to its inherent procedural flexibility. Parties to an arbitration often cross state lines and agree to the selection of an alternative forum in lieu of proceeding before a state or federal court. Often the only nexus to Ohio is the choice of arbitrator, while in some cases one party is an Ohio resident represented by an Ohio attorney, while the other party is a corporation represented by corporate counsel but licensed in another state. In the latter case, the choice of venue in Ohio is merely determined by the filing of an arbitration demand by the Ohio resident.

The Board is also aware of ABA Model Rule 5.5(c)(3) which would ostensibly permit an *out-of-state licensed attorney* in some instances to engage in the practice of law before arbitration hearings set in Ohio. We understand Rule 5.5 is currently under consideration by the Supreme Court Task Force on the Rules of Professional Conduct. If the Rule is adopted in its entirety, it could effectively overrule an opinion by this Board contrary to the intent of the Rule. The Board also notes that Rule 5.5 follows the modern trend of multijurisdictional law with respect to practice before arbitration tribunals and is in conformity with decisions of other jurisdictions.

In light of the pending adoption of Model Rule 5.5 in Ohio, and the record before the Board in Alexicole, we must respectfully decline to issue an advisory opinion at this time. However, the Board hopes that you will find the information gleaned from the record and a general discussion of the state of the law useful when considering the appropriateness of out-of-state attorneys engaged in arbitration related matters in Ohio.

Very truly yours,


James L. Ervin, Jr, Chair