

OHIO BOARD OF PROFESSIONAL CONDUCT

OPINION 2016-9

Issued December 9, 2016

Out-of-State Lawyer Practicing Exclusively Before Federal Courts or Agencies

Syllabus of Opinion:

An out-of-state lawyer who is admitted and in good standing in another United States jurisdiction, and also is admitted or authorized by law to appear before a federal court or agency in Ohio, may maintain an office or other systematic and continuous presence in Ohio. An out-of-state lawyer who is engaged in a federal practice and maintains a physical office in Ohio, may not provide legal services based on Ohio law to clients.

The letterhead of a lawyer not licensed to practice law in Ohio, engaged in a federal practice, and who maintains an office or other systematic and continuous presence, may include the designation "Attorney at Law," but must identify the federal courts or agencies to which the lawyer is admitted or permitted to appear and include an appropriate disclaimer regarding his or her jurisdictional limitations.

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.

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Withdraws Opinion 91-06

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APPLICABLE RULES: Prof.Cond.R. 1.2, 5.5, 7.1, and 7.5.

QUESTIONS PRESENTED:¹

(1) Whether an out-of-state lawyer, not admitted to practice in Ohio, is engaged in the unauthorized practice of law in Ohio if the lawyer advises

¹ The questions presented in this advisory opinion are the same or substantially similar to the questions presented in Adv.Op. 91-06.

clients on federal claims and appears in federal courts or before federal agencies in Ohio.

(2) Whether an out-of-state lawyer, who maintains an office in Ohio as authorized by federal law, is engaged in the practice of law in Ohio if the lawyer uses the designation “Attorney at Law” on his or her letterhead.

OPINION:

Question One

An out-of-state lawyer may not practice in violation of Ohio’s regulation of the practice of law. Prof.Cond.R. 5.5(a). An out-of-state lawyer, not admitted to Ohio, is unable to establish an office or other systematic or continuous presence in Ohio for the practice of law unless authorized by law or the Rules of Professional Conduct. More importantly, an out-of-state lawyer may not hold out to the public that he or she is admitted to practice law in Ohio. Prof.Cond.R. 5.5(b).

Under the Supremacy Clause of the U.S. Constitution (Art. VI), a state may not deny to those failing to meet its own qualifications, the right to perform functions authorized by federal law. *Sperry v. Florida ex rel. Florida Bar*, 373 U.S. 379, 385 (1963). Consequently, under Prof.Cond.R. 5.5(d)(2), an out-of-state lawyer is permitted to provide legal services in Ohio that the lawyer is authorized to provide under federal law. More specifically, a lawyer engaged in federal practice, who is admitted to practice in another United States jurisdiction and is in good standing, may establish an office or other systematic and continuous presence in Ohio.² Legal services authorized under federal law include those services arising out of admission before the federal courts in Ohio. Admission to practice before a federal district or bankruptcy court derives from membership in a state bar. *See e.g.*, Local Rule 83.3(b), Federal District Court, Ohio S.D.; *see also, Disciplinary Counsel v. Harris*, 137 Ohio St.3d 1, 2013-Ohio-4026 (out-of-state

² In Adv.Op. 91-06, the question before the Board involved an out-of-state lawyer seeking to establish an office in Ohio to practice federal law, but who was no longer admitted in any jurisdiction due to a resignation from practice not related to discipline. Analyzed under this opinion, the lawyer would not be permitted to practice in Ohio under Prof.Cond.R. 5.5(d) because the lawyer is not admitted and in good standing in any United States jurisdiction.

lawyer with an office in Ohio was a member of the District of Columbia bar and was admitted to practice before the United States Bankruptcy Court for the Northern District of Ohio.)

In addition to federal courts, several federal agencies expressly authorize by regulation a lawyer admitted to practice in any jurisdiction to practice and appear before them. For example, a lawyer may appear before and represent others before the United States Citizenship and Immigration Services (“USCIS”) that has jurisdiction over the immigration and naturalization of aliens. 8 CFR §§ 1.2, 292.1(a)(1). There is no requirement under USCIS regulations that the lawyer be a member of the bar of the state in which the lawyer practices immigration law.

When establishing an office in Ohio under Prof.Cond.R. 5.5(d), an out-of-state lawyer is prohibited from providing legal services to clients arising out of or reasonably related to Ohio law. Providing legal services or advice to clients requiring the application of Ohio law constitutes the unauthorized practice of law. Prof.Cond.R. 5.5(a). *Harris*, at ¶8, 18. The unauthorized practice of law in Ohio “includes representation before a court, as well as the preparation of pleadings and other legal documents, the management of legal actions for clients, all advice related to law and all actions taken on behalf of clients connected with the law.” *Cleveland Bar Ass’n v. CompManagement, Inc.*, 111 Ohio St.3d 444, 2006-Ohio-6108, ¶22. Accordingly, an out-of-state lawyer is required to limit his or her legal practice under Prof.Cond.R. 1.2 to the areas of law governed by federal law.

In conclusion, an out-of-state lawyer admitted in good standing in another United State jurisdiction may maintain an office or other systematic and continuous presence in Ohio if the lawyer is providing services authorized by federal law. Services authorized by federal law include the legal services necessary to represent clients before federal courts or federal agencies. A lawyer engaged in these services under Prof.Cond.R. 5.5(d)(2) is not engaged in the unauthorized practice of law, but must refrain from providing services based on Ohio law.

Question Two

An out-of-state lawyer seeking to practice in Ohio exclusively before federal courts or agencies and who maintains an office should also take precautions to not state or imply that the lawyer is admitted in Ohio. Prof.Cond.R. 5.5(b)(2). Prof.Cond.R. 7.1 prohibits misleading communications about a lawyer or his or her services. In addition, a law firm with offices in more than one jurisdiction is required to indicate the jurisdictional limitations of the lawyer or lawyers not licensed to practice in Ohio. Prof.Cond.R. 7.5. Consequently, the lawyer's letterhead, business cards, website and advertising materials, fee agreement, and even office signage containing the designation "Attorney at Law" should affirmatively state that the lawyer is not admitted in Ohio. Otherwise, communications from or about the lawyer could convey a misleading impression that the lawyer is generally admitted to practice in Ohio and can provide legal services requiring application of Ohio law. *See* Alaska Ethics Op. 2010-1 (out-of-state lawyer must clearly advise clients that he or she is not an Alaskan lawyer); Philadelphia Bar Ass'n, Ethics Op. 2005-14 ("Rules 7.1 and 7.5b require that the inquirer note on all her letterhead, office signage, business cards and on/in any other publicity or advertising vehicles, that she is admitted only in the state to which she is licensed, and that her practice in Pennsylvania is strictly limited to Immigration and Naturalization.")

Based on the forgoing, the letterhead of lawyer not admitted to practice law in Ohio, who maintains an office or other systematic and continuous presence in Ohio and appears in federal court or before federal agencies, may include the designation "Attorney at Law," but the letterhead should identify the federal courts to which the attorney is admitted or agencies permitted to appear before, with an appropriate disclaimer regarding the lack of admission to the Ohio bar, in order to comply with Prof.Cond.R. 5.5, 7.1, and 7.5.

CONCLUSION: An out-of-state lawyer may establish an office or systematic and continuous presence in Ohio if the lawyer's practice is authorized by federal law. An out-of-state lawyer engaged in a federal practice in Ohio who maintains an office in Ohio should identify the courts to which the lawyer is admitted or the agencies to which the lawyer is permitted to appear. The lawyer should also take affirmative steps to communicate the fact the lawyer is not admitted to practice law in Ohio through the lawyer's letterhead, business cards, website, fee agreement, and office signage that contains the designation "Attorney At Law." An out-of-state lawyer who maintains an office in Ohio limited to a federal practice may not provide legal services based on Ohio law to clients.