ALASKA BAR ASSOCIATION
ETHICS OPINION 2010-1

ABILITY OF LAWYER NOT ADMITTED IN ALASKA TO MAINTAIN ALASKA OFFICE FOR FEDERAL IMMIGRATION PRACTICE

Question Presented

May a lawyer whose practice is restricted to immigration matters maintain an Alaska office for purposes of practicing law when not an admitted member of the Alaska Bar Association?

Conclusion

Assuming that the lawyer clearly advises his clients that he is not an Alaska lawyer and avoids advising regarding legal issues outside of immigration law, the lawyer may maintain a physical office in Alaska.

Discussion

The Ethics Committee has received an inquiry as to the permissibility of an immigration lawyer not licensed as a lawyer in Alaska opening up an Alaska office exclusively for the purposes of practicing federal immigration law. Per federal regulations, immigration lawyers need only be admitted lawyers of any state. 8 C.F.R. § 1.1(f); Dingemans v. Board of Bar Examiners**,** 568 A.2d 354 (Vt. 1989).[1]

The ability of a lawyer authorized by federal law to practice in Alaska is governed by the Alaska Rules of Professional Conduct, Rule 5.5(d)(2), which states:

> A lawyer admitted in another United States jurisdiction and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:
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> . . . .

[1] A state law purporting to govern attorney practice before a federal administrative agency is invalid pursuant to the Supremacy Clause. E.g., Augustine v. Department of Veterans Affairs, 429 F.3d 1334 (9th Cir. 2005). Other examples of the Supremacy Clause affecting attorney licensing include the representation of clients in patent proceedings, bankruptcy proceedings, Social Security disputes, and Veterans Affairs matters. Sperry v. Florida, 373 U.S. 379 (1963); Matter of Bright, 171 B.R. 799 (E.D. Mich. 1994).

(2) are services that the lawyer is authorized to provide under federal law or other law of this jurisdiction.

The conclusion that the lawyer may have a physical office in Alaska is also reflected in the accompanying Commentary, which states:

> With the exception of paragraphs (d)(1)[2] and (d)(2), the Rule does not authorize the systematic and continuous presence in this jurisdiction without being admitted to the practice generally here. (Emphasis added.)

Although the Committee concludes that Rule 5.5(d)(2) allows a lawyer not admitted in Alaska to maintain an Alaska office for the exclusive practice of immigration law, the Committee has concerns that lawyers practicing under federal law but not admitted to practice in Alaska risk practicing law outside the authorized federal area of practice, since the "very acts of interview, analysis and explanation of legal rights constitute practicing law." Kennedy v. Bar Ass'n of Montgomery County, Inc., 561 A.2d 200 (Md. 1989) (unauthorized practice of law by lawyer admitted to federal district court); Office Of Disciplinary Counsel v. Marcone, 855 A.2d 654, 656 (Pa. 2004); Attorney Grievance Commission of Maryland v. Harris-Smith, 737 A.2d 567, 573 (Md. App. 1999) (federally licensed attorney should not triage incoming cases because of danger that advice would be artificially canted in safe direction and risk that unlimited practice of law will take place behind shield of federal practice); In re Lite Ray Realty Corp., 257 B.R. 150 (S.D.N.Y. 2001) (attorney suspended by New York bar cannot rely solely on admission to federal court to practice law). The Committee also has concerns about an attorney's duty to avoid false or misleading statements to potential clients as well as other counsel and courts. See Alaska Rules of Professional Conduct, Rules 3.3 and 4.1.

The Committee's concern is that clients and the public should not be misled about the lawyer's status of not being admitted to the Alaska Bar Association and therefore not authorized to practice law in Alaska except as provided under federal law. Under Alaska Professional Conduct Rule 1.2, the lawyer is required to limit the scope of his representation to the area of his federal practice. Under Rule 7.1, the lawyer is prohibited from making false or misleading communications regarding the lawyer or his services. Affirmative steps should be taken to avoid the potential for violating these rules. Examples of steps the lawyer might consider include expressly addressing the issue in the fee agreement, noting the limits of the practice on letterhead or in office signage, and affirmatively stating to clients that the lawyer is not a member of the Alaska Bar Association.

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[2] Paragraph (d)(1) governs in-house counsel performing services for an employer for which pro hac vice admission is not required.

Finally, the Committee reminds any lawyer with an Alaska office that a lawyer not admitted in Alaska is subject to the disciplinary authority of Alaska if the lawyer provides or offers to provide any legal services in this state. See Alaska Professional Conduct Rule 8.5(a).

Approved by the Alaska Bar Association Ethics Committee on April 1, 2010.
Adopted by the Board of Governors on April 27, 2010.