

THE DECLARATION UNDER DISCIPLINARY RULES “PRACTICING LAW” IN OHIO IS NOT LIMITED TO PRACTICING OHIO LAW



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A recent admissions case related to interpretation of Prof. Cond. Rule 5.5, which covers multijurisdictional practice, highlights the ethical ramifications of an increasingly mobile legal industry. The crux issue of the case is whether an attorney licensed in another state, who has applied for admission in Ohio can continue to represent clients from her state of licensure while being physically present in Ohio.

The Move

Alice Jones (Jones) was admitted to the Kentucky Bar in 2009, and subsequently worked in various attorney positions in the state. In 2015, she was employed as an Associate at Dinsmore & Shohl LLP (Dinsmore) in their Louisville office. At that time, for personal reasons, she decided to move to Ohio and transfer to Dinsmore's Cincinnati office. Dinsmore agreed but asked Jones to first apply for admission to the Ohio bar. While her admission was pending, the firm required Jones to work only on matters arising under Kentucky law. Accordingly, Jones applied in 2015 for reciprocal admission to Ohio. She then moved to Cincinnati and worked only on representing Kentucky clients under Kentucky law, under the supervision of a Louisville-based partner.

The Application

A Cincinnati Bar Association (Association) committee interviewed Jones in 2016 and recommended to the Board of Commissioners on Character and Fitness (Board) that her application be approved. The Board expressed some concern over Jones' arrangement and that her activity

of practicing Kentucky law while residing in Ohio may constitute the unauthorized practice of law, which would make her unfit for admission. After a hearing in 2017, the Board ordered Jones to cease the practice of law and submit an affidavit stating she would only provide paralegal or law clerk services until the Board completed its review. Jones responded that her practice was not in violation of Ohio Rules of Professional Conduct and that she would continue to represent Kentucky clients. In doing so, she relied on the unauthorized practice of law exception delineated in Prof Cond. Rule 5.5(c), which provides that an attorney licensed in another state who regularly practices law may provide services in Ohio on a temporary basis in certain instances. The Board disagreed, finding Jones has a “systematic and continuous” presence as described in Prof Cond. Rule 5.5(b) since she lives and works in Ohio.

Additionally, the Board reasoned that the unauthorized practice of law rules refer to the practice of law, not simply the practice of Ohio law. Moreover, the Board found that “temporary” should be defined under the paradigm of Prof Cond. Rule 5.5(b) such that if a lawyer has established an office and a systematic and continuous presence, then it can be reasonably concluded that the services being rendered are not temporary. Rules for the Government of the Bar, the Board cited, also prohibit practice of law in Ohio prior to an admission application. Finally, circumstantial evidence in relation to a proposed revision of the ABA model rule, which otherwise would not have been necessary, also provided support to the Board's argument. The Board concluded that Jones was engaged in the unauthorized practice of law and was therefore unfit for admission.

The Challenge

Jones and the Association challenged the conclusion of the Board to the Supreme Court of Ohio. Dinsmore and a collective of six firms with a large Ohio presence have filed amicus briefs claiming the Board's interpretation of the rule would significantly harm the ability for Ohio law firms, companies, and government to attract quality attorneys who are in good standing in other jurisdictions. The oral argument for the case was held on July 17, 2018.

The Takeaway

While the Supreme Court sorts out the issue, the distinctive stance adopted by the Board presents certain practical considerations for attorneys whose practice may cross state lines:

- Practice of law in Ohio under the ethical rules does not equate to only practicing Ohio law.
- A pending Bar admission does not automatically grant an out of state attorney temporary status to continue working on out of state matters.
- Regardless of a pending Bar application, services will not be “temporary” under Rule 5.5 (and thus may constitute the unauthorized practice of law) if the attorney has “a systematic and continuous” presence in Ohio through residency.

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