

An Attorney Admitted to Practice in another Jurisdiction, with No Physical Presence in Connecticut, May Advise a Connecticut Client on Matters of Federal Law

Informal Opinion 18-02

An attorney not admitted in Connecticut seeks an opinion based on the following scenario. The attorney is licensed in another state, and maintains an office and practice in that state. The attorney and her firm maintain no office or other physical presence in Connecticut, nor do they advertise in Connecticut or otherwise solicit Connecticut residents or businesses as clients. The attorney and her firm do not hold themselves out as authorized to practice in Connecticut.

The attorney inquires whether her firm may enter into an engagement agreement with a potential client located in Connecticut who seeks advice on matters pertaining exclusively to the interpretation and application of HIPAA (the Health Insurance Portability and Accountability Act of 1996), a federal statute. The inquiring lawyer indicates that if she were to undertake such representation, she would disclose to the client in writing, prior to commencing any representation or giving any advice to the client, that: (1) the attorney is not admitted to practice in Connecticut; (2) the attorney is not authorized to advise the client on any issues of Connecticut law; and (3) the representation will be limited solely to issues of HIPAA compliance. The lawyer anticipates that any and all advice given to the client will be provided exclusively by phone, email, or other telecommunications, without the attorney setting foot in Connecticut and without the attorney or anyone at her firm actively soliciting clients in Connecticut. The attorney's specific inquiry is whether such activity would run afoul of Connecticut's statutes concerning the unauthorized practice of law ("UPL").

The committee's primary purpose is to as-

sist lawyers in conforming their conduct to the Rules of Professional Conduct and related court rules. Accordingly, the committee construes the inquiry to be whether the proposed representation complies with the Connecticut court rules and Rules of Professional Conduct concerning unauthorized practice, specifically Rule 5.5 (Unauthorized Practice of Law) and Practice Book § 2-44A (Definition of the Practice of Law).¹

The Contemplated Representation Is Not Law Practice in Connecticut

Practice Book § 2-44A and Rule 5.5 each concern unauthorized practice in Connecticut. Accordingly, the initial question is whether the practice described amounts to practice "in" Connecticut. The committee concludes that it does not. Indeed, there appears to be no basis for the proposition that the representation described amounts to practice in Connecticut given that the only nexus to Connecticut is that the client who seeks the lawyer's advice is located in Connecticut.

The subject matter of the representation does not concern Connecticut law or any matter pending in Connecticut courts. The lawyer and her firm do not advertise or solicit clients in Connecticut. The attorney will disclose to the potential client, in writing, the jurisdictional limits on the attorney's practice and that the scope of the representation is limited to issues of compliance with HIPAA, a federal statute, without reference to Connecticut law. The lawyer and law firm have no physical presence in Connecticut and no part of the representation will be carried out in Connecticut.

To conclude that such practice amounts to practice "in" Connecticut would mean that anytime a Connecticut based person or business sought out, and received advice from, lawyers admitted outside the state

on matters wholly unrelated to Connecticut law or proceedings, such lawyers would be subject to claims of unauthorized practice in this state. Such a conclusion cannot be reconciled with the realities of modern practice and business, particularly in light of modern communications and electronic connections. As the authors of *Restatement (Third) of Law Governing Lawyers* (2000) ("Restatement") have stated,

It is also clearly permissible for a lawyer from a home-state office to direct communications to persons and organizations in other states (in which the lawyer is not separately admitted), by letter, telephone, telecopier, or other forms of electronic communication.

Restatement, § 3, comment e.

A number of large multi-national corporations have world-wide operations and a physical presence in many domestic and foreign jurisdictions, while they also happen to be domiciled in Connecticut. Carried to its logical conclusion, the contention that an attorney licensed outside the state who gives legal advice to a Connecticut based company on federal law, or the law of another jurisdiction, engages in practice "in" Connecticut would bar such companies from seeking counsel on matters such as corporate taxation, securities compliance, capital formation or federal administrative procedure from an attorney admitted and working in New York or in Washington, D.C., unless the attorney also holds a Connecticut law license. Along similar lines, such a reading of the rules would expose an attorney admitted in her home jurisdiction but not admitted in Connecticut to a claim of unauthorized practice whenever performing services in her home jurisdiction for an entity that has operations or offices both in the attorney's home jurisdiction and in Connecticut.

The committee is unaware of any authority for the proposition that law practice occurs “in” Connecticut when the only Connecticut nexus is the client’s location here.

The Safe Harbor Provisions for Lawyers Not Admitted In Connecticut

Even assuming, for the sake of argument, that an out of state lawyer giving legal advice on a matter controlled by federal law amounts to practice “in” Connecticut if the client is located in Connecticut, Practice Book § 2-44A and Rule 5.5 provide authorization for such practice. Subsection (b) (8) of Practice Book § 2-44A provides that law practice in the state is permitted where a person is “[p]erforming activities which are preempted by federal law.” Subsection (d)(2) of Rule 5.5 provides that a lawyer in good standing in another jurisdiction “may provide legal services in this jurisdiction that . . . (2) the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.” It is the committee’s opinion that the federal law exception embodied in each provision permits a lawyer admitted

in another jurisdiction to give advice to a Connecticut based client on matters of federal law. The contemplated representation concerns a matter that is entirely federal in nature and thus fits within the safe harbor provisions of Practice Book § 2-44A(b)(8) and Rule 5.5(d)(2). It therefore does not, by definition, come within the scope of impermissible unauthorized practice of law in Connecticut.

Non-admitted attorneys should, however, note well that the authorization is not so broad as to permit an out of state attorney to establish a presence in Connecticut by setting up a physical presence or by advertising his or her services to Connecticut residents.**CL**

Notes

1. Conn. Gen. Stat. § 51-88 (Practice of law by persons not attorneys), provides, in pertinent part, as follows: (a) Unless a person is providing legal services pursuant to statute or rule of the Superior Court, a person who has not been admitted as an attorney under the provisions of section 51-80 or, having been admitted under section 51-80, has been disqualified from the practice of law due to resignation, disbarment, being placed on inactive status or suspension, shall not: (1)

Practice law or appear as an attorney-at-law for another in any court of record in this state, (2) make it a business to practice law or appear as an attorney-at-law for another in any such court, (3) make it a business to solicit employment for an attorney-at-law, (4) hold himself or herself out to the public as being entitled to practice law, (5) assume to be an attorney-at-law, (6) assume, use or advertise the title of lawyer, attorney and counselor-at-law, attorney-at-law, counselor-at-law, attorney, counselor, attorney and counselor, or an equivalent term, in such manner as to convey the impression that he or she is a legal practitioner of law, (7) advertise that he or she, either alone or with others, owns, conducts or maintains a law office, or office or place of business of any kind for the practice of law, or (8) otherwise engage in the practice of law as defined by statute or rule of the Superior Court.

While the Committee generally declines to offer an interpretation of statutory law, in Informal Opinion 88-09, the Committee opined as follows: “In our judgment the phrase a ‘legal practitioner of law’ as used in [Conn. Gen. Stat. §] 51-88 should be construed to mean ‘a legal practitioner of law *in Connecticut*’ and ‘practice of law’ should be construed to mean ‘practice of law *in Connecticut*.’” (emphasis added) In this opinion, the Committee takes the position that the contemplated representation is not the practice of law *in Connecticut*. Accordingly, the contemplated representation does not appear to fall within any of the categories of unauthorized practice described in the statute.

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