



Alerts

Florida Bar Advisory Opinion Holds New Jersey Lawyer Working Remotely From Florida Home Does Not Violate Unauthorized Practice of Law Rules

August 11, 2020

Lawyers for the Profession®

Florida State Bar Standing Committee on the Unauthorized Practice of Law Advisory Opinion #2019-4 (August 17, 2020)

Brief Summary

The Florida State Bar Standing Committee on the Unauthorized Practice of Law (Committee) issued an advisory opinion that an IP attorney licensed in New Jersey, New York, and the United States Patent and Trademark Office (USPTO) did not establish a regular presence in Florida for purposes of the unauthorized practice of law by "merely living" and working remotely in the state. The Committee pointed to the fact that the attorney was not practicing Florida law, and neither providing legal services to Florida residents, nor advertising to the public that he had a Florida presence. Thus, the Committee concluded that the attorney was not engaging in the unauthorized practice of law (UPL).

Complete Summary

The Committee analyzed the following facts set forth by the petitioner in his request for an advisory opinion. The attorney had recently retired as chief IP counsel for a major U.S. Corporation, located in New Jersey, and thereafter moved to Florida. He began working for a New Jersey law firm where he specialized in federal IP law. The firm has no offices in Florida and no plans to expand there. The attorney's professional office was located at the firm's New Jersey business address, "although he would do most of his work from his Florida home using a personal computer securely connected to the firm's computer network."

In connection with his work for the firm, he would not represent any Florida persons or entities or solicit any Florida clients. Additionally, "while working from his Florida home, he will have no public presence or profile as an attorney in Florida." Neither the attorney nor his firm would represent to anyone that he is a Florida licensed attorney, nor will they "advertise or otherwise inform the public" of the attorney's "remote work presence in Florida." As to the lawyer's work, it is limited to federal IP issues in which no Florida law would be implicated. He also would not work on any issues involving Florida courts or property or give advice on Florida law.

Attorneys

Steven M. Puiszis

Service Areas

Lawyers for the Profession®

Professional Liability



Accordingly, the firm's letterhead and website—and the attorney's business cards—listed the attorney as "licensed only in NY, NJ and the USPTO," and provided no physical address for him other than the firm's New Jersey office address. Further, the firm's letterhead, website, and the lawyer's business cards showed that he can only be contacted through the firm's New Jersey phone and fax numbers. The firm would route phone calls to the lawyer's cell phone, which also has a New Jersey area code. In addition, his email address uses the firm's domain.

The attorney told the Committee: "[W]e've tried to set up and utilize the technology in a fashion that essentially places me virtually in New Jersey. But for the fact that I am sitting in a chair in a bedroom in Florida, every other aspect of what I do is no different than where I'm physically sitting in a chair in Eatontown, New Jersey and that's the way I tried to structure and have structured it so that the public sees a presence in . . . Eatontown, New Jersey and no other presence." The attorney also explained that the firm's cloud-based system houses all documents and files, along with document creation and communication capabilities, in New Jersey.

The Committee began its review with Florida's UPL rules. Florida, like other jurisdictions, prohibits lawyers who are not admitted to practice in the state from establishing an office or other regular presence in Florida for purposes of the practice of law. Based on the facts above, the Committee concluded that the lawyer and his firm would not be establishing a law office in Florida. It also found that the lawyer would not be establishing a regular presence in Florida *for the practice of law*. It noted he "will merely be living" there. Thus, "all indicia" pointed to the attorney's practice of law in New Jersey. Critical to the Committee's opinion was the lack of any public presence in Florida by the attorney and the firm, and the attorney's representation that he would provide no legal services to Florida clients. Relying on the long-standing principle and supporting authority that UPL rules are intended to protect state citizens from incompetent, unethical, or unscrupulous lawyers, the Committee opined that "there is no interest that warrants regulating [the attorney's] practice for his out-of-state clients under the circumstances described in his request simply because he has a private home in Florida."

Finally, the Committee recognized the potential benefit to the profession as a whole in relaxing outdated and draconian UPL restrictions, and found particularly persuasive the written testimony of a Florida-licensed attorney:

I believe the future, if not the present, will involve more and more attorneys and other professionals working remotely, whether from second homes or a primary residence. Technology has enabled this to occur, and this flexibility can contribute to an improved work/life balance. It is not a practice to discourage.

There are areas of the law that do not require being physically present, whether in a courtroom or a law office. Using an attorney's physical presence in Florida as the definitive criteria [sic] is inappropriate. So long as the attorney is not practicing Florida law, is not advertising that he practices Florida law, and creates no public presence or profile as a Florida attorney, then there is no UPL simply because the attorney is physically present in Florida. There is no harm to the public. These facts do not and should not constitute UPL in Florida.

Significance of the Opinion

The Committee's opinion is one of several other recent ethical opinions that take a broader view of what it means to engage in the unauthorized practice of law in an age of increased lawyer mobility and rapidly improving technology.

Given the lack of uniform guidance on this issue, practitioners must recognize that practicing remotely across state lines still poses a significant risk of UPL violations, the consequences of which can be severe, and include disciplinary action, criminal prosecution, and disgorgement of fees. Practitioners should consider the UPL rules of both the state in which they are licensed and the state in which they are considering for a remote practice. Finally, practitioners should understand that if they intend to become licensed in the state in which they are practicing remotely, their remote practice in the state prior to their admission will be scrutinized for UPL violations as part of the character review process.

See, e.g., Utah Ethics Advisory Opinion 19-03; *In re Application of Jones* (2018) 123 N.E.3d 877 (concurring opinion finding UPL restrictions imposed on out-of-state lawyer practicing Kentucky law for Kentucky clients in Kentucky courts from Ohio office unconstitutional); D.C. State Bar Committee on the Unauthorized Practice of Law 24-20 (out-of-state lawyers may practice law from attorney's residence in D.C. under "incidental and temporary practice" exception of UPL



rule, if the attorney (1) is practicing from home due to the COVID-19 pandemic; (2) maintains a law office in a jurisdiction where the attorney is admitted to practice; (3) avoids using a D.C. business address and does not hold out to the public as authorized to practice in D.C.; and (4) does not regularly conduct in-person meetings with clients or third parties in D.C.)