

STATE BAR OF NEVADA
STANDING COMMITTEE ON
ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion No. 43
Issued on October 27, 2011.

BACKGROUND

A Nevada lawyer has requested an opinion concerning the application of the Rules of Professional Conduct to the association of an lawyer licensed to practice and in good standing in another state with a Nevada law firm for the purpose of providing transactional services to Nevada clients. It is presumed that the lawyer has not been disbarred or suspended from practice in her home state, and it is further assumed that the lawyer will keep her membership of the bar where she is licensed current and in good standing.

QUESTION PRESENTED

May a lawyer not licensed in Nevada associate with a Nevada law firm and provide legal assistance on transactional matters? If so, may the out-of-state lawyer provide the full range of transactional services after registering under Nevada Rule of Professional Conduct ("NRPC") 5.5A?

ANSWER

Yes. A lawyer admitted in another jurisdiction may associate with a Nevada lawyer to provide transactional services to Nevada clients provided that: (1) the Nevada lawyer has actual responsibility for, and actively participates in, the representation; (2) the services are not part of a regular or repetitive course of practice in Nevada; and (3) the out-of-state lawyer makes timely reports to the State Bar of Nevada.¹ There is no limitation on the range of services.

AUTHORITIES

- a. Nevada Rules of Professional Conduct 5.5 and 5.5A (2010)
- b. NRS 7.285.

DISCUSSION

The practice of law in Nevada is governed by NRS 7.285, which criminalizes the unauthorized practice of law. The statute provides, at subsection 1(a), that:

1. A person shall not practice law in this state if the person:

¹ This opinion does not address a situation in which a lawyer admitted in another jurisdiction acts as a law clerk under the supervision of a Nevada lawyer.

(a) Is not an active member of the State Bar of Nevada or otherwise authorized to practice law in this state pursuant to the rules of the supreme court; or
...

The pertinent Supreme Court Rules are NRPC 5.5 and 5.5A. Rule 5.5 provides specific exceptions to what would otherwise constitute the unauthorized or unlawful practice of law. The exception pertinent to this question is 5.5(b)(5), which provides:

(5) The lawyer is engaged in the occasional representation of a client in association with a lawyer who is admitted in this jurisdiction and who has actual responsibility for the representation and actively participates in the representation, provided that the out-of-state lawyer's representation of the client is not part of a regular or repetitive course of practice in this jurisdiction;

Under this provision, a lawyer admitted in another jurisdiction who affiliates with a Nevada lawyer may render legal services on transactions for Nevada clients if the Nevada lawyer is actively engaged in the matter, takes actual responsibility for the matter and if the work is not performed on a regular or repetitive basis.

Another exception which may be applicable is Rule 5.5(b)(4), which provides:

(4) The lawyer is acting with respect to a matter that is incident to work being performed in a jurisdiction in which the lawyer is admitted, provided that the lawyer is acting in this jurisdiction on an occasional basis and not as a regular or repetitive course of business in this jurisdiction.

Under Rule 5.5(b)(4), a lawyer admitted in another jurisdiction, whether or not they are affiliated with a Nevada lawyer, may render legal services on transactions for Nevada clients if that work is incidental to work being performed in the jurisdiction where the lawyer is admitted and if the work is provided on an occasional and not a regular or repetitive basis.

Although it is not expressly mandated by NRPC 5.5, a prudent practitioner would give written notice to the Nevada client that the out-of-state lawyer is not licensed to practice law in Nevada but is proceeding under the exceptions granted in NRPC 5.5.

When proceeding under any of the exceptions provided in NRPC 5.5, the out-of-state lawyer must file the yearly report mandated by NRPC 5.5A. NRPC 5.5A requires that all lawyers admitted in any other jurisdiction who are practicing transactional or extra-judicial services in, or related to, Nevada must report to the State Bar of Nevada on an annual basis. The report must describe the services rendered pursuant to NRPC 5.5 during the preceding calendar year. Filing under NRPC 5.5 does not, by itself, authorize practicing law in Nevada. It merely reports what has already been done.

This opinion is issued by the Standing Committee on Ethics and professional Responsibility of the State Bar of Nevada pursuant to SCR 225. It is advisory only. It is not binding on the courts, the State Bar of Nevada, its Board of Governors, any person or tribunal charged with regulatory responsibility, or any other member of the State Bar of Nevada.