

A Non-Illinois Lawyer Sending Letter Appealing University Discipline to Illinois University on behalf of Illinois Student

Question: While the Question of the Month is intended to provide Illinois lawyers with insight into professional responsibility topics, our caller this month was a lawyer who practices criminal law in another state. The caller has an Illinois relative that is currently enrolled at an Illinois university. The student was recently disciplined by the university for a violation of the Student Code. The caller believes the student's discipline was disproportionate compared to the student's conduct, and that there were legitimate procedural issues in the university's disciplinary process relating to notice requirements, among other things.

The caller wanted to know if submitting a letter to the university on behalf of the student which seeks to appeal the discipline based on these arguments would be considered the unauthorized practice of law. Because lawyers are often asked by friends or relatives to provide advice outside their regular practice area, sometimes including taking action in jurisdictions in which they are not licensed to practice, the caller's question raises issues Illinois lawyers should consider in the event they are asked to take action in another jurisdiction.

Discussion: Most people understand that representing another in court is the practice of law. But the Supreme Court of Illinois has held that the practice of law extends to services performed outside of court and includes "the giving of advice or the rendering of any services requiring the use of legal skill or knowledge." *People v. Schafer*, 404 Ill. 45 (1949). Illinois Rule of Professional Conduct Rule 5.5 prohibits lawyers from practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction. In addition, Illinois Supreme Court Rule 779(a) authorizes the Administrator of the ARDC to bring a disciplinary complaint against an out of state lawyer for engaging in the unauthorized practice of law in Illinois, and non-Illinois lawyers have been disciplined for engaging in such conduct in Illinois.

Relatedly, the Illinois State Bar Association's Opinion 23-01 provides instructive guidance on this topic. In Opinion 23-01, the Committee considered whether a non-Illinois lawyer could send a demand letter to an Illinois business on behalf of an Illinois resident. The opinion concluded that such conduct would violate Illinois Rule of Professional Conduct 5.5, which addresses the multijurisdictional practice of law, but recognized that there are circumstances where a non-Illinois lawyer's demand letter may fall within one of the exceptions under Rule 5.5(c).

Here, a non-Illinois lawyer sending a letter to an Illinois university on behalf of an Illinois resident which seeks to appeal the university's discipline of a student likely constitutes the practice of law, particularly, since the non-Illinois lawyer is applying legal knowledge to the facts of the student's case and raising legal arguments regarding the student's procedural due process rights. Notably, the fact that the student is also a relative of the lawyer would not affect this analysis. An out-of-state lawyer cannot act as legal counsel in Illinois for a relative any more than the lawyer could for any other client.

To determine whether a non-Illinois lawyer may practice law in Illinois by sending such a letter in appeal of the student's discipline, an analysis under Rule 5.5 must be conducted.

Rule 5.5(a) states: “A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.” However, Rule 5.5(c) provides exceptions which allow a lawyer admitted in another United States jurisdiction, and who is not disbarred or suspended from the practice in any jurisdiction, to provide legal services on a temporary basis in the State of Illinois.

Rule 5.5(c)(1)

Under Rule 5.5(c)(1), a non-Illinois lawyer may provide legal services on a temporary basis in Illinois that “are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter.”

Comment [8] of Rule 5.5 explains that: “Paragraph (c)(1) recognizes that the interests of clients and the public are protected if the lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.”

In the scenario presented by the caller, the non-Illinois lawyer could represent the student in matters relating to the university’s disciplinary process if that representation was undertaken in connection with an attorney who was admitted to practice law in Illinois and who actively participated in the matter.

Rule 5.5(c)(2) and (c)(3)

Under Rule 5.5(c)(2), a non-Illinois lawyer may provide legal services on a temporary basis in Illinois that “are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized.”

Comment [10] of Rule 5.5 explains that a non-Illinois lawyer providing legal services on a temporary basis would not be engaging in the unauthorized practice of law if the lawyer’s conduct is in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted *pro hac vice*.

Under Rule 5.5(c)(3), a non-Illinois lawyer may provide legal services on a temporary basis in Illinois that “are in or reasonably related to a pending or potential arbitration, mediation, or alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admissions.”

In the situation described by the caller, there is no indication in the facts presented that either exception under 5.5(c)(2) or (c)(3) applies.

Rule 5.5(c)(4)

Under Rule 5.5(c)(4), a non-Illinois lawyer may provide legal services on a temporary basis in Illinois that “are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice.”

Comment [14] of Rule 5.5 provides examples of facts that may evidence that the lawyer’s services are “reasonably related” to the lawyer’s practice in the jurisdiction in which the lawyer is admitted, such as:

The lawyer’s client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer’s work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client’s activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer’s recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally uniform, foreign, or international law.

In the caller’s scenario, the non-Illinois lawyer indicated that they practice criminal law in another jurisdiction. As there are no facts which indicate the student’s conduct violated federal criminal law or has a connection to the jurisdiction in which the non-Illinois lawyer is licensed, there is no indication that this exception would apply.

Illinois Lawyers Sending Letters to Another Jurisdiction

Illinois Rule of Professional Conduct 8.5 sets forth the choice of law provision for disciplinary matters. Rule 8.5(a) provides that a lawyer admitted to practice in Illinois is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer’s conduct occurs. However, Rule 8.5(b) states that:

In exercise of the disciplinary authority in this jurisdiction, the rules of professional conduct to be applied shall be as follows:

- (1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and
- (2) for any other conduct, the rules of the jurisdiction in which the lawyer’s conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline

if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominate effect of the lawyer's conduct will occur.

The American Bar Association ("ABA") promulgates the Model Rules of Professional Conduct, which provides a national standard for the ethical rules adopted each jurisdiction. However, Model Rule 5.5 has not been uniformly adopted as written across the United States, and some jurisdictions have versions of the Rule 5.5 that contain notable deviations from the Model Rule.

Thus, in the inverse of the situation described by the caller, where an Illinois lawyer sends a letter to a university outside of Illinois and on behalf of a student with no relationship to Illinois, the Illinois lawyer must consult the other jurisdiction's version of Rule 5.5 to determine whether the Illinois lawyer's conduct may constitute the unauthorized practice of law in that jurisdiction.

A comparable example of this situation was addressed in a Minnesota case involving a lawyer admitted to practice law in Colorado, who attempted to negotiate a debt settlement on behalf of his in-laws and was found to have engaged in the unauthorized practice of law. *In re Charges of Unprofessional Conduct in Panel File No. 39302*, 884 N.W.2d 661 (Minn. 2016). In that case, the Colorado lawyer argued that he did not engage in the practice of law in Minnesota by sending emails from **another** jurisdiction.

In a divided opinion, the Minnesota Supreme Court considered whether the lawyer had sufficient contact with the Minnesota clients to render the nature of the legal services a clear legal representation and whether the lawyer's contact with Minnesota was merely fortuitous or attenuated. The Minnesota court considered that the Colorado lawyer had contacted a Minnesota lawyer, stating that he represented Minnesota clients in a Minnesota legal dispute, which arose from a judgment entered against the clients in a Minnesota court, and that he continued to engage in correspondence and negotiations with the Minnesota lawyer over the course of several months. Ultimately, the Minnesota court found that the lawyer had a clear, ongoing attorney-client relationship with his Minnesota clients and that his contacts with Minnesota were not fortuitous or attenuated, and rejected the lawyer's other arguments that any exception under Rule 5.5(c) applied.

As noted in Rule 8.5(b), if the Illinois lawyer's conduct conforms to the rules of the other jurisdiction, then the Illinois lawyer would not be subject to discipline, even if that conduct is contrary to Illinois's view on the unauthorized practice of law.

Conclusion:

Rule 5.5(c) of the Illinois Rules of Professional Conduct recognizes four permissible circumstances in which a non-Illinois lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in Illinois. For a non-Illinois lawyer to send a letter to an Illinois university on behalf of an Illinois student seeking to appeal a disciplinary action taken by the university, one of the exceptions under Rule 5.5(c) must apply.

In the inverse scenario, if an Illinois lawyer seeks to send a letter to another jurisdiction in which the lawyer is not licensed, the Illinois lawyer must consult the other jurisdiction's version of Rule 5.5 and determine if the same conduct would constitute the unauthorized practice of law in that jurisdiction.

References:

[People v. Schafer, 404 Ill. 45, 87 N.E.2d 773 \(1949\)](#)

[Illinois Rule of Professional Conduct 5.5: Unauthorized Practice of Law](#)

[Illinois Supreme Court Rule 779](#)

[Illinois Rule of Professional Conduct 8.5: Disciplinary Authority; Choice of Law](#)

[Illinois State Bar Association Opinion 23-01](#)

[Variations of the ABA Model Rules of Professional Conduct Across Jurisdictions – Rule 5.5](#)

[Bovitz, Jennifer S. & Eckler, Donald Patrick, Conforming Your Multijurisdictional Practice to the Ethics Rules, American Bar Association \(June 11, 2024\)](#)

[In re Charges of Unprofessional Conduct in Panel File No. 39302, 884 N.W.2d 661 \(Minn. 2016\)](#)