

COMMITTEE ON THE UNAUTHORIZED PRACTICE OF LAW

Appointed by the Supreme Court of New Jersey

OPINION 55

Out-of-State Lawyer “Associated With” New Jersey Lawyer Solely for Practice of Immigration Law (Supplementing Opinion 44)

The Supreme Court Committee on the Unauthorized Practice of Law received an inquiry from a lawyer who is admitted to practice law in New York but not New Jersey, currently practices immigration law in New York, and is considering opening a law office in New Jersey for the practice of immigration law. Out-of-state lawyers may practice immigration law in New Jersey if they “associate with New Jersey attorneys in a New Jersey law firm.” Committee on the Unauthorized Practice of Law Opinion 44 (October 2008). The inquirer requested clarification on the meaning of “associating with” a New Jersey lawyer, and whether an “of-counsel” relationship will satisfy the requirement. This Opinion supplements Opinion 44.

An out-of-state lawyer may engage in federal immigration practice from an office in New Jersey provided the lawyer associates with a licensed New Jersey lawyer, and provided further that all advertising expressly notes that the lawyer’s practice is limited to immigration matters and the lawyer is not licensed in New Jersey. The underlying premise is that association with a New Jersey lawyer provides a measure of needed oversight.

Association with a New Jersey lawyer is required both to ensure that collateral state issues are addressed by a New Jersey lawyer and also to provide a safeguard against

unauthorized practice of law. The associated New Jersey lawyer further ensures that the out-of-state lawyer complies with New Jersey rules governing the practice of law in New Jersey, including administrative requirements regarding New Jersey operating and trust accounts and adherence to the rules governing attorney advertising. Accordingly, the “associated New Jersey lawyer” must be present in the firm and closely involved with the law firm’s practice in order to serve in the required oversight role and to provide advice on any collateral State law issue.

The inquirer asked whether an “of counsel relationship” with a New Jersey lawyer would satisfy the requirement of “associating with” a New Jersey lawyer. The Committee on Attorney Advertising has stated that an attorney may be listed as “of counsel” on firm letterhead only if the of counsel lawyer “will have hands-on responsibility for, or will frequently render advice on, a law firm’s matters.” Committee on Attorney Advertising Opinion 21 (February 1997). This definition can be met by “of counsel” lawyers who have relatively transitory relationships to the firm or perform frequent per diem work as well as those who are the equivalent of a partner though are paid differently.

The definition of “of counsel” in Committee on Attorney Advertising Opinion 21 does not address the additional concerns that arise when an out-of-state lawyer is practicing immigration law from a New Jersey office. Therefore, the Committee responds with a functional definition of “associate with New Jersey attorneys in a New Jersey law firm,” rather than relying on labels such as “of counsel.” The “associated New Jersey lawyer” must be present in the firm and closely involved with the law firm’s practice in order to serve in the required oversight role and to provide advice on any collateral State law issue. If these functions are fulfilled, the New Jersey lawyer may be of counsel, a partner, or an associate to the out-of-state immigration lawyer (provided the New Jersey lawyer can deliver the necessary oversight).