

COMMITTEE ON THE UNAUTHORIZED PRACTICE OF LAW

Appointed by the Supreme Court of New Jersey



OPINION 60

Multijurisdictional Practice Under Rule of Professional Conduct 5.5(b)(3)(iv) as Applied to Out-of-State Lawyers Who Provide Legal Services in New Jersey Court Cases

In this Opinion, the Committee addresses Rule of Professional Conduct 5.5(b)(3)(iv) as applied to out-of-state lawyers who provide legal services in New Jersey court cases but do not “appear” in the case. This Opinion is issued in response to a recent Appellate Division decision finding that a Pennsylvania lawyer, not licensed in New Jersey, assisted in the representation of a New Jersey client in a New Jersey medical malpractice action but did not engage in the unauthorized practice of law. Johnson v. McClellan, 468 N.J. Super. 562 (App. Div.), certif. den. 249 N.J. 76 (2021). Specifically, the court found that the Pennsylvania lawyer was permitted to engage in this conduct pursuant to Rule of

Professional Conduct 5.5(b)(3)(iv). The Pennsylvania lawyer, however, did not associate with a New Jersey lawyer and never registered as a multijurisdictional practitioner pursuant to Rule of Professional Conduct 5.5(c)(3) and (6). Therefore, the conduct was, in fact, the unauthorized practice of law.

This Opinion provides guidance to out-of-state lawyers who will not appear in the case but seek to assist lawyers admitted to practice, plenary or pro hac vice, in New Jersey court cases. Out-of-state lawyers who provide lower-level assistance, such as researching legal issues and drafting documents under the direct supervision of an admitted lawyer, need not register as a multijurisdictional practitioner. Similarly, out-of-state lawyers who merely consult with an admitted lawyer on specialized legal issues need not register as a multijurisdictional practitioner. In contrast, out-of-state lawyers who directly advise a client or provide other legal services, such as drafting documents, outside the direct supervision of an admitted lawyer in a New Jersey case are engaging in the unauthorized practice of law. If such lawyers do not seek pro hac vice admission under Rule 1:21-2 to appear in the case, they must register as multijurisdictional practitioners under Rule of Professional Conduct 5.5(b)(3).

Rule of Professional Conduct 5.5(b)(3) provides a mechanism for out-of-state lawyers to practice New Jersey law in transactional or out-of-court matters under certain limited circumstances. It was adopted by the New Jersey Supreme

Court in 2003 and governs what is now known as multijurisdictional practice.

Multijurisdictional practice is a relatively recent development in the law that has not been uniformly enacted across the nation.

In 2001, the New Jersey Supreme Court formed an Ad Hoc Committee on Bar Admissions (Wallace Committee) to study, among other things, reports on multijurisdictional practice issued by the American Bar Association (ABA) and the New Jersey State Bar Association (NJSBA).¹ The NJSBA Committee on Multijurisdictional Practice Report recommended a multijurisdictional practice rule that is “more detailed, and stricter in application” than the rule proposed by the ABA Commission on Multijurisdictional Practice and the ABA Ethics 2000 Commission. Report at 7. The NJSBA sought to “respect traditional restrictions that curtail unauthorized practice” and “ensure the lawyer’s obligations to the state Supreme Court.” *Id.* at 7 and 9.

The Supreme Court accepted the recommendations of the Wallace Committee regarding multijurisdictional practice in its Administrative

¹ The ABA Commission on Multijurisdictional Practice Report can be found at www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mjp_migrated/201b.pdf. The NJSBA Committee on Multijurisdictional Practice Report can be found at www.njcourts.gov/notices/reports/njsba_mjp.pdf. The Wallace Committee Report can be found at: www.njcourts.gov/notices/reports/finalreport.pdf.

Determinations, issued in September 2003.² The Court stated: “In making its decision, the Court’s intent was to establish a multijurisdictional practice rule that is both realistic and enforceable. It viewed the more conservative NJSBA approach as the preferable method of formally introducing the concept of multijurisdictional practice into our Rules of Professional Conduct.” Id. at 14. The Court requested that the Professional Responsibility Rules Committee “identify practical and reasonable means of tracking attorneys who avail themselves of the opportunities provided by RPC 5.5,” including a requirement to pay the annual attorney assessment. Ibid. In July 2004, the Court added provisions to paragraph (c) of Rule of Professional Conduct 5.5 to require multijurisdictional practitioners to register and pay the annual attorney assessment.

The Professional Responsibility Rules Committee evaluated the new rules and issued a report to the Court in January 2008.³ It recommended that the Court adopt the Model ABA provision allowing lawyers who associate with a New Jersey attorney, who is responsible for the lawyer’s practice, to be eligible for multijurisdictional practice. Id. at 14.

² The Administrative Determinations can be found at: www.njcourts.gov/notices/reports/Bar-Admissions-Report-2003.pdf.

³ The Professional Responsibility Rules Committee Report can be found at: www.njcourts.gov/courts/assets/supreme/reports/2008/prrc2008.pdf.

The Court did not take immediate action on these recommendations. In the next Professional Responsibility Rules Committee Report, issued in January 2010,⁴ the Committee resubmitted these proposals and also recommended a loosening of the exception regarding lawyers who represent clients in alternative dispute resolution. Specifically, the Committee recommended that the only condition to an out-of-state lawyer representing a party in such matters be that 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 pro hac vice admission pursuant to R. 1:21-2 is required.” *Id.* at 5. Services for which pro hac vice admission are required include mediation or arbitration that is ordered by a court or is otherwise connected to a pending New Jersey court case. The Court adopted the recommendations, effective September 1, 2010.

Shortly thereafter, the Committee on the Unauthorized Practice of Law (UPL Committee) wrote to the Court, noting that the new provision in Rule of Professional Conduct 5.5 permitting an out-of-state lawyer to engage in activities in New Jersey by merely associating with a New Jersey lawyer appeared to negate the Court’s holding in *In re Jackman*, 165 N.J. 580 (2000), which held that an out-of-state lawyer practicing from the office of a New Jersey law firm may not

⁴ This Report can be found at:
www.njcourts.gov/courts/assets/supreme/reports/2010/prrc2010.pdf.

provide legal advice to New Jersey clients in New Jersey transactional matters.

The Court responded that it had no intention of overruling Jackman and directed the UPL Committee to propose a clarifying amendment to the Professional Responsibility Rules Committee.

The UPL Committee recommended that Rule of Professional Conduct 5.5 be amended to limit the “association” exception to “occasional” matters.⁵ The Professional Responsibility Rules Committee addressed the UPL Committee’s concerns in its 2012 Report to the Court.⁶ It agreed with the proposal to limit practice to “occasional” matters and recommended that the Rule be amended to require the out-of-state lawyer to “designate and disclose to all parties in interest” the New Jersey lawyer who will be associated with the out-of-state lawyer. Id. at 25. The Court adopted these amendments to Rule of Professional Conduct 5.5(b)(3)(iv) in 2013. The Rule currently provides that an out-of-state lawyer may practice New Jersey law if the practice “is occasional and the lawyer associates in the matter with, and designates and discloses to all parties in interest, a lawyer admitted to the Bar of this State who shall be held responsible for the conduct of

⁵ The proposal of the Committee on the Unauthorized Practice of Law to the Professional Responsibility Rules Committee is attached as Exhibit E to the 2012 PRRC Report.

⁶ This Report can be found at:
www.njcourts.gov/courts/assets/supreme/reports/2012/prrc2012.pdf.

the out-of-State lawyer in the matter.” RPC 5.5(b)(3)(iv). As noted above, out-of-state lawyers relying on this exception to engage in occasional practice in New Jersey must also register and pay the annual assessment. RPC 5.5(b)(3)(c).

The multijurisdictional practice rule was not intended to supplant the existing rule on pro hac vice admission in New Jersey court cases. An out-of-state lawyer who seeks to practice New Jersey law by appearing in a matter that is filed in a New Jersey court must seek admission pro hac vice under Court Rule 1:21-2. An “appearance” in a New Jersey court matter includes representing a party in court, signing court papers, actively participating in depositions, being “on the brief,” and similar activities. As pro hac vice admission is available only on the filing of a complaint, Rule of Professional Conduct 5.5(b)(1) permits an out-of-state lawyer to engage in preliminary work and “prepar[e] for a proceeding” in which the lawyer expects to be admitted pro hac vice, provided the lawyer associates in that work with a New Jersey lawyer. Pro hac vice admission and multijurisdictional practitioner registration are mutually exclusive; lawyers may not rely on multijurisdictional practitioner registration under Rule of Professional Conduct 5.5(b)(3) to appear in a New Jersey court case.

Since the Rule’s adoption in 2003, out-of-state lawyers have registered to practice New Jersey law in transactional matters, administrative matters, and complementary dispute resolution matters. Research has not disclosed a court or

Committee opinion addressing the application of Rule of Professional Conduct 5.5(b)(3)(iv) to matters pending in a New Jersey court prior to the issuance of the Johnson v. McClellan decision in 2021.

In Johnson v. McClellan, the Pennsylvania lawyer participated in the New Jersey case but did not appear or seek pro hac vice admission. He reviewed the complaint with the client, drafted an affidavit, communicated with expert witnesses, and otherwise assisted trial counsel, who was not a New Jersey licensed lawyer but was admitted pro hac vice in the case. The court found that these activities are covered under Rule of Professional Conduct 5.5(b)(3)(iv). As noted above, however, the Pennsylvania lawyer did not register under Rule of Professional Conduct 5.5(c) and he did not associate with a lawyer who was plenary admitted to the New Jersey bar. Therefore, this was the unauthorized practice of law.⁷

The Committee recognizes that clients, especially those who are out-of-state, may seek counsel from a familiar lawyer who, while not licensed in New Jersey, serves as a liaison to trial counsel in the New Jersey case. Clients or their lawyers

⁷ While a published Appellate Division decision is binding on trial courts, Gormley v. Wood-El, 218 N.J. 72, 114 (2014), the Supreme Court exercises constitutional power over the conduct of attorneys, In re Application of Philip J. Livolsi, 85 N.J. 576, 585 (1981). The Supreme Court granted this Committee the jurisdiction to issue advisory opinions “relating to the unauthorized practice of law.” R. 1:22-2(a). This Opinion of the Committee may be reviewed by the Supreme Court pursuant to Rule 1:22-3A.

also often retain a separate lawyer with special expertise in the subject matter to assist trial counsel in the preparation of the case but not to “appear” in the case. Further, when an out-of-state lawyer is retained to represent a party in New Jersey litigation and is admitted pro hac vice, there are often other out-of-state lawyers in the law firm who assist the pro hac vice admitted lawyer in the case.

Admission to practice pro hac vice is extended to the individual lawyer, not to entire law firms. See Advisory Committee on Professional Ethics Opinion 550 (January 24, 1985) (“out-of-state lawyers who have not been admitted to the bar here in accordance with the rules of our Supreme Court are not authorized to conduct a practice in New Jersey, either on their own or through the subterfuge of New Jersey-licensed ‘associates’”). Out-of-state lawyers who are working under the direct supervision of a lawyer admitted pro hac vice in a New Jersey case are often practicing New Jersey law but are generally considered not to be engaged in the unauthorized practice of law. See In re Opinion No. 24 of the Committee on Unauthorized Practice of Law, 128 N.J. 114, 123 (1992) (paralegals engage in the practice of law but it is not the unauthorized practice of law when the paralegal works under the direct supervision of the lawyer). Accordingly, an out-of-state lawyer in the pro hac vice lawyer’s firm can engage in lower-level activities under the direct supervision of the admitted lawyer, such as researching legal issues, drafting documents for review by the admitted lawyer, and accompanying the

admitted lawyer in witness interviews without registering as a multijurisdictional practitioner.

Similarly, out-of-state lawyers with special expertise in the subject matter who assist trial counsel in the preparation of a New Jersey case are often practicing New Jersey law. If the consultation is lawyer-to-lawyer and does not involve direct interaction with the client, this activity is not considered the unauthorized practice of law and generally does not require registration as a multijurisdictional practitioner.

Out-of-state lawyers who directly advise a client about a New Jersey case or who provide legal services, such as drafting documents, outside the direct supervision of an admitted lawyer, must register as a multijurisdictional practitioner. If the lawyer does not, the lawyer engages in the unauthorized practice of law.

Lawyers who serve as in-house counsel to a company that is engaged in New Jersey litigation often interact with outside counsel who represents the company in court. In-house counsel lawyers are an extension of the client itself. Provided in-house counsel works with outside counsel in the New Jersey court case, neither pro hac vice admission nor multijurisdictional practitioner registration is necessary.

Accordingly, out-of-state lawyers who participate in New Jersey court cases under the direct supervision of an admitted lawyer, or who consult with admitted counsel on specialized issues, need not register as a multijurisdictional practitioner. However, out-of-state lawyers who directly advise a client or provide other legal services, such as drafting legal documents, not under the direct supervision of an admitted lawyer in a New Jersey case must register as a multijurisdictional practitioner under Rule of Professional Conduct 5.5(b)(3). Ultimately, it is a fact-sensitive inquiry and this Opinion cannot cover all conceivable scenarios. There may be other circumstances for which admission or registration is required and out-of-state lawyers are encouraged to seek guidance before engaging in the practice of New Jersey law. An out-of-state lawyer who practices New Jersey law in connection with a New Jersey court case without pro hac vice admission or multijurisdictional practitioner registration engages in the unauthorized practice of law.