

Committee on Unauthorized Practice of the Law
Committee on Attorney Advertising
Appointed by the Supreme Court of New Jersey

OPINION 44

Committee on the Unauthorized Practice of the Law

OPINION 40

Committee on Attorney Advertising

**Out-of-State Lawyer Employed in a
New Jersey Law Firm Office
Solely for Practice of Immigration Law
(Modifying Opinion 27)**

The New Jersey Supreme Court Committee on Unauthorized Practice of the Law received an inquiry asking whether, in the New Jersey office of a multistate law firm, the firm may employ an attorney solely for the practice of federal immigration law who is not licensed in New Jersey but is licensed in another United States jurisdiction. The inquirer further asked whether law firm advertisements may note the presence of this non-New Jersey attorney and his or her availability to New Jersey clients for immigration matters. The Committee on Attorney Advertising joins in this Opinion with regard to the advertising issues raised by the inquirer.

In Opinion 27, 133 *N.J.L.J.* 652, 2 *N.J.L.* 324 (March 1, 1993), the Committee decided that an out-of-state attorney practicing immigration law in New Jersey may not establish an office in New Jersey or advertise his or her presence to New Jersey clients for immigration work. The Committee, however, acknowledged that out-of-state lawyers may, under the rules of the federal immigration agency, represent clients in immigration matters in New Jersey and the federal Supremacy Clause requires New Jersey to permit such practice. *Cf. Sperry v. Florida ex rel. Florida Bar*, 373 *U.S.* 379 (1963); 8 *C.F.R.* Sections 1.1(f) and 292.1(a)(1) (permitting attorneys licensed in a United States jurisdiction to represent a person before the federal administrative agency). The Committee stated that “if the client sought out the attorney in the attorney’s licensing state, or if the attorney is of counsel in a New Jersey law firm, there is no regulation prohibiting such attorney from appearing before the [federal immigration agency] in this State. . . . However, such attorney may not establish an office, or otherwise advertise his or her presence in this State.”

The Committee in Opinion 27 found that because immigration clients frequently raise collateral state law issues, involving criminal matters, family law matters, landlord-tenant matters, and the like, an out-of-state attorney practicing immigration law may not advertise his or her presence here or open a solo office in New Jersey. The Committee was concerned that the non-New Jersey licensed solo practitioner with a client presenting such collateral state law issues would face difficulty separating the unlawful practice from a lawful practice. The Committee recognized in Opinion 27 that if the out-of-state attorney is of counsel in a New Jersey law firm, then there would be New Jersey licensed attorneys available within the firm to handle state law matters. The availability of New Jersey attorneys in the firm assuages the concern that the out-of-state lawyer would be tempted to engage in the

unauthorized practice of law by providing legal advice to an immigration client on state law issues. Further, the New Jersey licensed partners in the law firm have the ethical obligation to ensure that the out-of-state lawyer engages only in the lawful immigration law practice and not in any unlawful practice. *RPC 5.5(a)(2)*.

An attorney not licensed in New Jersey may not advertise his or her availability to provide legal services to New Jersey residents. Because the attorney is not authorized to engage in the practice of law in New Jersey, such advertising generally offers an unlawful service and may be prohibited. *Central Hudson Gas & Elec. Corp. v. Public Service Comm'n of New York*, 447 U.S. 557 (1980); see *Gould v. Harkness*, 470 F. Supp. 2d 1357 (So.D.Fla. 2006) (prohibiting out-of-state lawyer from advertising in jurisdiction where he is not licensed to practice law).

As noted above, an attorney licensed in another United States jurisdiction is permitted to represent persons in the federal immigration agency in New Jersey. If the out-of-state attorney is associated with New Jersey attorneys in a New Jersey law firm and solely engages in immigration law, then the attorney may practice from that law firm's offices in New Jersey. Cf. *Surrick v. Killion*, 449 F.3d 520 (3d Cir. 2006). Any advertising by the out-of-state attorney or the law firm, however, must be accurate and not misleading. Hence, all communications (including the firm's letterhead, business cards, website, and advertising materials) must specifically state that the attorney is not licensed in New Jersey and that the attorney's practice is limited to immigration matters. See *Rules of Professional Conduct* 7.1(a) (all communications concerning a lawyer's services must be accurate and not misleading) and 7.5(b) (law firm communications must reflect jurisdictional limitations of attorneys). Further, as provided in *RPC 7.5(b)*, if the law firm name does not include the

name of any attorney licensed in New Jersey, then all communications, advertising, letterhead, and the like must include the name of the New Jersey licensed attorney in the firm who is responsible for the firm's New Jersey practice.