

Opinion 516
July 1996
Tex. Comm. on Professional Ethics, Op. 516, V. 59 Tex. B.J. 647 (1996)

FACTS

An attorney has a valid, active law license issued by a state or jurisdiction in the United States other than Texas, and such attorney is not licensed to practice law in Texas (the out-of-state attorney). The out-of-state attorney intends to represent clients in Texas solely on immigration and nationality law matters before the United States Immigration and Naturalization Service and in federal courts.

QUESTIONS

1. Do the following activities of the out-of-state attorney violate the Texas Disciplinary Rules of Professional Conduct?

(a) Out-of-state attorney travels to Texas to appear and represent a client in Texas solely before the U.S. Immigration and Naturalization Service on an isolated matter;

(b) Out-of-state attorney establishes an office in Texas and represents clients in Texas solely on immigration and nationality law matters before the U.S. Immigration and Naturalization Service and in federal courts; and

(c) Out-of-state attorney resides in Texas, becomes an employee of an attorney who is licensed in Texas, and in connection with such employment the out-of-state attorney represents clients in Texas solely on immigration and nationality law matters before the U.S. Immigration and Naturalization Service and in federal courts.

2. If the out-of-state attorney who holds himself or herself out to the public as practicing solely federal law in Texas, but does in fact advise clients in Texas concerning legal matters other than in federal court proceeding or before the U.S. Immigration and Naturalization Service is the out-of-state attorney subject to discipline by the State Bar of Texas for violating the Texas Disciplinary Rules of Professional Conduct?

3. Is an out-of-state attorney who represents clients in Texas solely on immigration and nationality law matters before the U.S. Immigration and Naturalization Service and in federal court proceedings required to disclose in advertising the fact that the out-of-state attorney is not licensed to practice law in Texas and, in fact, is licensed as an attorney in a state or jurisdiction other than Texas?

4. Does Texas law limit or prevent the out-of-state attorney, who practices law in Texas solely on immigration and nationality law matters before the U.S. Immigration and Naturalization Service and in federal courts, from engaging in any the activities set forth in (a), (b), or (c) of question one?

DISCUSSION

These questions present issues concerning (i) the jurisdiction of the State Bar of Texas to apply and enforce the Texas Disciplinary Rules of Professional Conduct (Texas Disciplinary Rules) to attorneys not licensed to practice law in Texas but who have a valid, active license to practice law in another state or jurisdiction in the United States, (ii) the unauthorized practice of law in Texas, and (iii) the duties of a licensed attorney in Texas who employs an out-of-state attorney holding himself or herself out to represent clients in Texas solely on immigration and nationality matters before the U.S. Immigration and Naturalization Service and in federal court proceedings.

JURISDICTION OF THE STATE BAR OF TEXAS

Texas Disciplinary Rule 8.05(a) provides, in part: A lawyer is subject to the disciplinary authority of this state, if admitted to practice in this state or if specially admitted by a court of this state for a particular proceeding.≡ The committee interprets the phrase Admitted to practice in this state≡ to mean licensed to practice law in Texas and admitted as a member of the State Bar of Texas. The jurisdiction of the State Bar of Texas does not permit it to take disciplinary action for any violation of the Texas Disciplinary Rules against any person who is not licensed to practice law in Texas or who is not specially admitted by a Texas court for a particular proceeding. Accordingly the out-of-state attorney is not subject to disciplinary proceedings or actions by the State Bar of Texas if any of his or her activities in Texas violate the Texas Disciplinary Rules, including but not limited to the restrictions on advertising contained therein.

UNAUTHORIZED PRACTICE OF LAW IN TEXAS

A determination as to what constitutes the unauthorized practice of law in Texas is within the province of the Unauthorized Practice of Law Committee, Texas Board of Law Examiners, and ultimately Texas courts. The Professional Ethics Committee has no authority to issue opinions about what constitutes the unauthorized practice of law in Texas.

Without issuing an opinion on the subject of unauthorized practice of law, the committee assumes that the representation of clients in Texas by an out-of-state attorney solely on issues or matters of federal law in the area of immigration and nationality law before the U.S. Immigration and Naturalization Service and in federal courts does not constitute the unauthorized practice of law in Texas. The committee further assumes that this is incorrect regardless of whether the out-of-state attorney lives in or outside of Texas, maintains an office in Texas, or is employed by an attorney who is licensed to practice law in Texas, so long as the representation of clients in Texas by an out-of-state attorney is in fact limited only to issues or matters of federal law.

These assumptions are based on the U.S. Supreme Court decision, *Sperry v. Florida*, 373 U.S. 379 (1963); Texas Ethics Opinion 276 (TBJ, September 1964, Supplement No. 4); Section I(C) of the APolicy Statement on Lawful Practice≡ adopted by the Texas Board of Law Examiners (July 1994); and 8 C.F.R. 31.1(f) and 8 C.F.R. 292.1(a)(1) which define attorneys who are authorized to represent persons before the Immigration and Naturalization Service as Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia....≡

However, the committee recognizes that the foregoing assumptions do not resolve all unauthorized practice of law problems presented in this question. As a practical matter, it simply may not be possible to separate federal and state law issues when representing clients on matters under the U.S. Immigration and Nationality Act. Representing clients on immigration and nationality law may require an out-of-state attorney to know and advise such clients on issues and matters involving Texas law. For example, Texas law governing family matters such as marriage, divorce and adoption may be determinative in certain immigration cases; likewise, immigration law questions may necessarily involve giving advice on Texas criminal law statutes, Texas employment laws, or other Texas law. Accordingly, the risk of engaging in the unauthorized practice of law in Texas inevitably increases with the number of immigration and nationality cases handled by an out-of-state attorney.

TEXAS ATTORNEY WHO EMPLOYS AN OUT-OF-STATE ATTORNEY

Texas Disciplinary Rule 5.05 titled AUnauthorized Practice of Law≡ provides in subsection (b) that a lawyer licensed to practice in Texas shall not Aassist a person who is not a member of the bar in the performance of activity that constitutes the an authorized practice of law.≡ If an out-of-state attorney becomes an employee of a licensed Texas attorney, then the Texas attorney assumes the risk and becomes subject to discipline under the Texas Disciplinary Rules if the Texas attorney assists an out-of-state attorney in engaging in any legal representation of clients in Texas, which would include any advertising not in compliance with the Texas Disciplinary Rules, on issues or matters that in fact are not limited solely to federal law.

CONCLUSION

Under the jurisdictional provisions set forth in Texas Disciplinary Rule 8.05(a), the State Bar of Texas does not have the authority to take disciplinary actions under the Texas Disciplinary Rules or Texas Rules of Disciplinary Procedure against any person who is not licensed to practice law in Texas or who is not specially admitted by a Texas court for a particular proceeding.

It is assumed that representing clients in Texas solely on issues or matters before the U.S. Immigration and Naturalization Service and in federal courts would not constitute the unauthorized practice of law in Texas. However, any such representation that also involves advice or other legal services relating to matters of Texas law would not be within the scope of this assumption and may, depending on the circumstances, constitute the unauthorized practice of law in Texas.

A licensed Texas attorney who employs an out-of-state attorney is subject to discipline under Texas Disciplinary Rule 5.05(b) if he or she aids or assists an out-of-state attorney in providing legal services to clients in Texas that would constitute the unauthorized practice of law.