

New Jersey Clarifies Permissible Scope of Transactional Work by Out-of-State Lawyers

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[New Jersey Committee on the Unauthorized Practice of Law, Opinion 49, Multijurisdictional or Crossborder Practice Under Rule of Professional Conduct 5.5\(b\)\(3\) \(October 3, 2012\)](#)

Brief Summary

The New Jersey Committee on the Unauthorized Practice of Law opined that an out-of-state lawyer may negotiate and prepare a real estate contract in New Jersey, albeit under limited circumstances.

Complete Summary

The New Jersey Committee on the Unauthorized Practice of Law (Committee) issued an opinion on the permissibility of an out-of-state lawyer representing an out-of-state buyer in the preparation of a contract for the purchase of New Jersey real estate. The Committee first opined that drafting a contract and/or negotiating a contract constitutes the practice of law, and therefore then turned to the safe-harbor provisions in New Jersey RPC 5.5(b)(3), which allow limited forms of practice by out-of-state lawyers.

New Jersey RPC 5.5(b)(3)(i) permits:

negotiation of the terms of a transaction in furtherance of the lawyer's representation on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice and the transaction originates in or is otherwise related to a jurisdiction in which the lawyer is admitted to practice.

The Committee noted that the buyer was an existing client of the lawyer in the lawyer's state of admission, and the Committee presumed that the purchase was related to the buyer's out-of-state business. The Committee therefore opined that Rule 5.5(b)(3)(i) allowed the "negotiation" of the contract, but not its preparation.

The Committee then turned to New Jersey RPC 5.5(b)(3)(v), which allows practice in New Jersey:

with respect to a matter where the practice activity arises directly out of the lawyer's representation on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice, provided that such practice in this jurisdiction is occasional and is undertaken only when the lawyer's disengagement would result in substantial inefficiency, impracticality or detriment to the client.

The Committee assumed that the lawyer's disengagement could result in inefficiency, impracticality or detriment to the client. The Committee therefore opined that this rule would allow the above described representation so long as such practice was "occasional." The Committee clarified that "occasional" means practice that is not "frequent" or "recurring."

Significance of Opinion

This opinion clarifies the boundaries of New Jersey's unauthorized practice of law and multijurisdictional practice rules. But it does little to clarify the boundary between the "negotiation" of a contract and the "preparation" of a contract. Finally, the Committee's interpretation of the "occasional" practice limitation differs from the more temporal, "temporary" practice limitation in most jurisdictions.

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