



# **The North Carolina State Bar**

## **Guidelines for Attorneys Licensed in other Jurisdictions**

Authorized Practice Committee

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### **I. Introduction**

A common question presented to the North Carolina State Bar is when and to what extent an attorney licensed to practice in another state may engage in activities within North Carolina that would constitute the practice of law without engaging in the unauthorized practice of law. As recognized by the revisions to Rule 5.5 of the Revised Rules of Professional Conduct, not all activities by attorneys licensed in other states within the state of North Carolina constitute the unauthorized practice of law. However, Rule 5.5 does not apply to attorneys licensed in another jurisdiction who either relocate to North Carolina to practice law or otherwise have a regular presence in North Carolina. (See Comment 2 to Rule 5.5).

These guidelines are intended to help attorneys, both those licensed in North Carolina and those licensed elsewhere, as well as policy makers and regulators, understand the extent to which out of state attorneys who relocate or have a regular presence in North Carolina may engage in activities that fall within the scope of the practice of law without engaging in the unauthorized practice of law in North Carolina. These guidelines reflect the understandings, policies, and interpretations of the law on unauthorized practice in North Carolina by the Authorized Practice Committee of the North Carolina State Bar, the committee charged by the Council of the North Carolina State Bar with investigating complaints of unauthorized practice under N.C. Gen. Stat. §84-37. They are for general guidance and may not resolve all issues associated with such activities.

### **II. Definitions**

For purposes of these guidelines, the terms below are defined as follows:

1. “Appropriate supervision” means the necessary and adequate training, instruction, and oversight of the activities of an unlicensed attorney.
2. “FEO” means the formal ethics opinions adopted by the North Carolina State Bar interpreting the Revised Rules of Professional Conduct.
3. “Legal activities” means any activity, task, or action that constitutes the practice of law pursuant to N.C. Gen. Stat. §§ 84-2.1 through 5.
4. “Legal advice or opinion” means advice or an opinion on a matter of law as it applies to a member of the public.
5. “Legal document” means any document affecting the legal rights of any person including, but not limited to, any deed, mortgage, will, trust instrument, contract or any document filed in any court, quasi-judicial or administrative tribunal.
6. “Licensed jurisdiction(s)” means the state(s) or jurisdiction(s) in which an attorney is licensed to practice law.
7. “Member of the public” means any person, firm, entity, organization, or corporation residing in North Carolina including, but not limited to, clients, prospective clients, or other parties in need of legal services.
8. “North Carolina legal matter” means any legal matter dependent upon the interpretation or application of North Carolina law where jurisdiction lies in North Carolina.
9. “North Carolina legal office” means any presence in North Carolina, including temporary or virtual presences, maintained by a law firm, legal department, or other individual or entity from which activities that constitute the practice of law are provided or offered to members of the public in North Carolina.
10. “Opposing person” means any party, agent, or attorney who has a legal position opposite or in any way not consistent with the legal position being advocated by the unlicensed attorney.
11. “Owner” means any person who owns an interest as a partner, shareholder, member, or other similar designation in a law firm located in North Carolina.

12. “Public communication” means any written or oral communication with a member of the public including, but not limited to, any letter, letterhead, solicitation, advertisement, or listing of attorneys or employees of a law firm.
13. “Providing or giving legal advice or opinion” means giving an opinion on the application of the facts of a specific situation to the applicable law or legal principles to reach a legal conclusion.
14. “Responsible North Carolina attorney” means a licensed North Carolina attorney who is responsible for the appropriate supervision of an unlicensed attorney.
15. “Rule(s)” means the Rules of Professional Conduct adopted by the North Carolina State Bar.
16. “RPC” means ethics opinions adopted under the former Rules of Professional Conduct.
17. “Unlicensed attorney(s)” means any attorney licensed in another state or jurisdiction who: (a) seeks to relocate or has relocated to North Carolina to practice law, (2) works for or is employed by a law firm located in North Carolina, or (3) otherwise engages in any activities from a North Carolina legal office that would constitute the practice of law in North Carolina as set forth in N.C. Gen. Stat. §§ 84-2.1 to 5.
18. “Written legal opinion” means any email, fax, letter, memorandum, or other writing, in any form or media, that provides legal advice or opinion.

### **III. Guidelines**

#### **1. What types of legal activities can an unlicensed attorney perform?**

In general, an unlicensed attorney can perform only the same legal activities that can be done by a non-lawyer under appropriate supervision unless the legal activities fall under a recognized exception to the unauthorized practice rules such as a limited practice before the federal courts or agencies or employment as in-house corporate counsel. The following specific guidelines assume that the unlicensed attorney is not acting within one of the exceptions.

**a. Can an unlicensed attorney perform the same or similar legal activities after relocating to North Carolina as he or she did when located or present in his or her licensed jurisdiction?**

In general, the answer is no, an unlicensed attorney may not perform the same or similar legal activities in North Carolina as he or she did in his or her licensed jurisdiction. Any legal activities performed by an unlicensed attorney in North Carolina must be done under the appropriate supervision of a responsible North Carolina attorney as with other non-lawyers. An unlicensed attorney may not establish a North Carolina law office or provide independent legal advice or counsel to members of the public except as permitted under Rule 5.5 of the Rules of Professional Conduct.

**b. Can an unlicensed attorney meet or speak about a legal matter directly with a member of the public outside the presence of the responsible North Carolina attorney?**

Yes. However, an unlicensed attorney may not provide or give his or her independent legal advice or opinion to a member of the public. An unlicensed attorney, as with any non-lawyer, may communicate or convey to a member of the public a legal opinion or legal advice provided by or specifically approved by a responsible North Carolina attorney under appropriate supervision.

**c. Can an unlicensed attorney provide a written legal opinion directly to a member of the public?**

No. Only a licensed North Carolina attorney can provide a written legal opinion to a member of the public. Any document prepared by an unlicensed attorney that contains a legal opinion or legal advice must be reviewed and specifically approved by a licensed North Carolina attorney before being disseminated to a member of the public.

**d. Can an unlicensed attorney negotiate a legal claim directly with an opposing person?**

No. An unlicensed attorney, however, may convey to an opposing person a settlement offer or position provided or specifically approved by a responsible North Carolina attorney. The unlicensed attorney may not alter or negotiate such settlement offers or positions not specifically

provided or approved by a responsible North Carolina attorney, or otherwise exercise independent legal judgment in negotiating or settling a legal claim directly with an opposing person.

**e. Can an unlicensed attorney draft legal documents, research memoranda, or briefs?**

Yes. A responsible North Carolina attorney, however, must review and approve any legal document, legal memorandum, or brief before it is submitted to any court, quasi-judicial, or administrative tribunal, or a copy is provided to any member of the public. Additionally, no legal document, legal memorandum, or brief should be submitted to any court, quasi-judicial or administrative tribunal that is signed by an unlicensed attorney, unless the attorney has been admitted *pro hac vice*, and no other legal document, legal memorandum, or brief shall be provided to a member of the public unless signed or authorized by a responsible North Carolina attorney.

**2. Are there legal activities that an unlicensed lawyer cannot perform even if supervised by a responsible North Carolina attorney?**

Yes, an unlicensed attorney cannot perform any legal activities that require him or her to exercise independent legal judgment or to provide any legal services.

**a. Can an unlicensed attorney appear in a North Carolina court, quasi-judicial or administrative tribunal on behalf of any other person, firm, or corporation?**

No. (See 2000 FEO 10).

**b. Can an unlicensed attorney appear in court for the limited purpose of a specific case, commonly referred to as *pro hac vice* admission?**

No. If the unlicensed attorney resides in North Carolina, he or she is not eligible to be admitted under N.C. Gen. Stat. § 84-4.1.

**c. Can an unlicensed attorney take or defend a deposition of a matter pending, or that must be filed, in a North Carolina court, quasi-judicial or administrative tribunal?**

No. (See RPC 183). However, an attorney licensed in another jurisdiction may take or defend a deposition of a person physically located in North Carolina if the deposition relates to an action pending or to be filed in the attorney's licensed jurisdiction.

**d. May an unlicensed attorney conduct a real estate closing conference for property located in North Carolina without a responsible North Carolina attorney being physically present?**

An unlicensed attorney may oversee the execution of closing documents without a responsible North Carolina attorney present, provided clients are informed that the unlicensed attorney is not admitted to practice in North Carolina, as a nonlawyer may do. However, an unlicensed attorney may not provide legal advice or opinion on any legal questions related to the closing or prepare the legal documents without the review and approval of a North Carolina attorney in the exercise of appropriate supervision. (See 2002 FEO 9, AP Advisory Opinion 2002-1).

**3. Can a law firm that employs an unlicensed attorney hold that person out in a public communication to a member of the public as a lawyer, attorney, or person otherwise capable or competent to practice law?**

Yes, with the following qualifications:

First, the law firm should not hold out the unlicensed attorney as an attorney, lawyer, or person capable of practicing law in any public communication. As noted above, this qualification may not apply to an unlicensed person who exclusively practices federal law, as more fully set forth in guideline number 6.

Second, the unlicensed attorney or law firm must include on any public communication that he or she is not licensed in North Carolina and specify the attorney's licensed jurisdiction(s). (Rule 7.1 & Comment 8).

**4. Can an unlicensed attorney work on North Carolina legal matters in a legal office maintained by a North Carolina attorney?**

Yes, under the following conditions:

First, if the unlicensed attorney plans to seek admission to the North Carolina State Bar or practice law in the state, he or she preferably should submit an application before beginning work in any North Carolina legal office.

Second, the unlicensed attorney must work under the appropriate supervision of a responsible North Carolina attorney (Rule 5.3; RPC 70, RPC 216). In determining the appropriate level of supervision, an unlicensed attorney is considered to be a non-lawyer, such as a legal assistant, paralegal, or law clerk. As with any nonlawyer, however, the unlicensed attorney's experience, training, and demonstrated competence, or lack thereof, must be considered in determining the appropriate supervision that must be provided by the responsible North Carolina attorney.

**5. What is the ethical responsibility of a law firm that employs an unlicensed attorney?**

Generally, the law firm and lawyers therein have an obligation to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the unlicensed lawyer's conduct is compatible with the professional obligations of the lawyers in the firm (Rule 5.3). For example, it is advisable for a lawyer or a law firm employing an unlicensed attorney to adopt and implement policies and procedures, preferably in writing, that specify what legal activities an unlicensed attorney can and cannot perform, who is responsible for exercising appropriate supervision over the unlicensed attorney, and what level of supervision is necessary for specific types of legal activities.

**6. Can an unlicensed attorney maintain an office or be employed by a law firm located in North Carolina if the unlicensed attorney's law practice is limited exclusively to areas of federal law that do not require a North Carolina law license?**

Yes. However, the law firm and unlicensed attorney must clearly indicate on any public communication that the attorney is not licensed in North Carolina, specify the unlicensed attorney's licensed jurisdiction(s), and note that the unlicensed attorney's practice is limited to specific area(s) of federal law. (See Rule 7.1 and Comment 8). Areas of exclusive federal law include, but are not limited to, immigration, patent, federal tax, federal tort claims, military, maritime, and claims before the Social Security Administration. Other areas of federal law including, but not limited to, bankruptcy and trademark law, may involve issues of state law

and, consequently, cannot be practiced in North Carolina without being admitted to the North Carolina State Bar.

**7. Can an unlicensed attorney serve as in-house counsel to a corporation in North Carolina?**

Yes. Under *State v. Pledger*, 257 N.C. 634, 127 S.E.2d 337 (1962) any owner, officer, or employee of a corporation, including unlicensed attorney employees, may provide legal advice to the corporation or prepare legal documents for the corporation on matters in which the corporation is a party. An unlicensed attorney serving as corporate counsel, however, may not perform any legal activities for any member of the public, except as specifically set forth in N.C. Gen. Stat. § 84-5(b). Additionally, an unlicensed attorney acting as in-house counsel to a corporation may not represent the corporation in a proceeding before a court unless eligible for and admitted by the court *pro hac vice*. (See, *LexisNexis v. Travishan*, 155 N.C.App. 205, 573 S.E.2d 547 (2002). An unlicensed attorney using the designation “corporate counsel,” “in-house counsel,” or any other similar term or designation that could imply that he or she is competent or capable to practice law, must clearly indicate in any public communication that he or she is not licensed in North Carolina and state in what jurisdiction(s) he or she is licensed to practice law.

**8. Can an unlicensed attorney be an owner in a law firm located in North Carolina that also has offices actively maintained and staffed in the unlicensed attorney’s license jurisdiction(s)?**

Yes, provided that the law firm is registered with the North Carolina State Bar as an interstate law firm pursuant to Revised Rule 7.1 Comment 9 and 27 N.C.A.C. 1E, § .0201-05. Conversely, an unlicensed attorney cannot be an owner in a law firm located in North Carolina if the firm does not have an office actively maintained and staffed in the unlicensed attorney’s licensed jurisdiction.