

**REPRESENTING A CLIENT AT AN NASD
ARBITRATION:
IS IT THE UNAUTHORIZED PRACTICE OF LAW?**

By: Houston Putnam Lowry¹

- I. Arbitration administered by the National Association of Securities Dealers is still arbitration.
 - A. NASD Rule 10316 provides:
All parties shall have the right to representation by counsel at any stage of the proceedings.
 - B. The rules do not specifically authorize non-attorney representatives. Even if it did, the NASD does not have the authority to override state statutes regarding the unauthorized practice of law.
 - 1. For instance, the fact the American Arbitration Association's commercial arbitration rules do not authorize the unauthorized practice of law.²

- II. A number of states have considered the question of whether or not representing a party at an arbitration constitutes the practice of law.
 - A. To practice law, you must be licensed.³

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² AAA Commercial Arbitration Rule-24. Representation.
Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the AAA of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

³ Connecticut General Statutes §51-88. Practice of law by persons not attorneys
(a) A person who has not been admitted as an attorney under the provisions of section 51-80 shall not:
(1) Practice law or appear as an attorney-at-law for another, in any court of record in this state,
(2) make it a business to practice law, or appear as an attorney-at-law for another in any such court,
(3) make it a business to solicit employment for an attorney-at-law,

B. No one has really defined the practice of law.

- (4) hold himself out to the public as being entitled to practice law,
- (5) assume to be an attorney-at-law,
- (6) assume, use or advertise the title of lawyer, attorney and counselor-at-law, attorney-at-law, counselor-at-law, attorney, counselor, attorney and counselor, or an equivalent term, in such manner as to convey the impression that he is a legal practitioner of law, or
- (7) advertise that he, either alone or with others, owns, conducts or maintains a law office, or office or place of business of any kind for the practice of law.

(b) Any person who violates any provision of this section shall be fined not more than two hundred and fifty dollars or imprisoned not more than two months or both. The provisions of this subsection shall not apply to any employee in this state of a stock or nonstock corporation, partnership, limited liability company or other business entity who, within the scope of his employment, renders legal advice to his employer or its corporate affiliate and who is admitted to practice law before the highest court of original jurisdiction in any state, the District of Columbia, the Commonwealth of Puerto Rico or a territory of the United States or in a district court of the United States and is a member in good standing of such bar. For the purposes of this subsection, "employee" means any person engaged in service to an employer in the business of his employer, but does not include an independent contractor.

(c) Any person who violates any provision of this section shall be deemed in contempt of court, and the Superior Court shall have jurisdiction in equity upon the petition of any member of the bar of this state in good standing or upon its own motion to restrain such violation.

(d) The provisions of this section shall not be construed as prohibiting:

- (1) A town clerk from preparing or drawing deeds, mortgages, releases, certificates of change of name and trade name certificates which are to be recorded or filed in the town clerk's office in the town in which the town clerk holds office;
- (2) any person from practicing law or pleading at the bar of any court of this state in his own cause;
- (3) any person from acting as an agent or representative for a party in an international arbitration, as defined in subsection (3) of section 50a-101; or
- (4) any attorney admitted to practice law in any other state or the District of Columbia from practicing law in relation to an impeachment proceeding pursuant to Article Ninth of the Connecticut Constitution, including an impeachment inquiry or investigation, if the attorney is retained by
 - (A) the General Assembly, the House of Representatives, the Senate, a committee of the House of Representatives or the Senate, or the presiding officer at a Senate trial, or
 - (B) an officer subject to impeachment pursuant to said Article Ninth.

C. The following states have considered the question and allow out of state attorneys to represent parties in arbitrations:

1. **Illinois** - Illinois Appellate Court ruled that representing a party to an arbitration does not constitute the practice of law, *Colmar, Ltd. v. Fremantlemedia North America, Inc.*, 2003 Ill. App. LEXIS 1410 (12/4/2003).
2. **New Jersey** - In an informal opinion, the New Jersey Committee On The Unauthorized Practice Of Law appointed by the Superior Court determined an out of state attorney may represent a party to an American Arbitration Association arbitration, *Opinion 30*, 138 N.J.L.J. 1558, December 12, 1994.
3. **New York** - representing a party to an arbitration does not constitute the practice of law, *Williamson v. John D. Quinn*, 537 F. Supp. 613 (SDNY 1982).
4. **Washington DC** - allowed the American Automobile Association's local affiliate to represent members regarding auto accidents claims against other members, *American Automobile Association v. Merrick*, 117 F.2d 23 (DC Cir. 1940).

D. The following states have considered the question and consider representing a party at an arbitration to be the practice of law:

1. **Arizona** - In 2000, the Arizona Supreme Court held that representing a party to an uninsured motorist arbitration constituted the practice of law *In Re Frederick C. Creasy, Jr.*, 12 P.3d 214 (Ariz. 2000). Arizona Supreme Court Rule 31(b) provides, "no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar..." Being a disbarred attorney, Creasy was not allowed to represent parties in an arbitration.
2. **California** - In the *Birbrower, Montalbano, Condon & Frank, P.C. v. Super. Ct. of Santa Clara County*, 949 P.2d 1 (Cal. 1998), case, California held that representing a party to an arbitration constituted the practice of law. "The Court of Appeal also concluded Birbrower's violation barred the firm from recovering its legal fees..., including fees generated in New York by the attorneys when they were physically present in New York."

The law firm was denied recovery of its fees, even though the arbitration never actually took place (because the case settled).⁴

⁴ This ruling created a lot of excitement in the legal press. California then adopted rules allowing out of state counsel the right to conduct arbitrations in California because of a statute adopted by the California legislature:

1282.4. (a) A party to the arbitration has the right to be represented by an attorney at any proceeding or hearing in arbitration under this title. A waiver of this right may be revoked; but if a party revokes such waiver, the other party is entitled to a reasonable continuance for the purpose of procuring an attorney.

(b) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, an attorney admitted to the bar of any other state may represent the parties in the course of, or in connection with, an arbitration proceeding in this state, provided that the attorney, if not admitted to the State Bar of California, timely files the certificate described in subdivision (c) and the attorney's appearance is approved by the arbitrator, the arbitrators, or the arbitral forum.

(c) Prior to the first scheduled hearing in an arbitration, the attorney described in subdivision (b) shall serve a certificate on the arbitrator or arbitrators, the State Bar of California, and all other parties and counsel in the arbitration whose addresses are known to the attorney. In the event that the attorney is retained after the first hearing has commenced, then the certificate shall be served prior to the first hearing at which the attorney appears. The certificate shall state all of the following:

- (1) The attorney's residence and office address.
- (2) The courts before which the attorney has been admitted to practice and the dates of admission.
- (3) That the attorney is currently a member in good standing of, and eligible to practice law before, the bar of those courts.
- (4) That the attorney is not currently on suspension or disbarred from the practice of law before the bar of any court.
- (5) That the attorney is not a resident of the State of California.
- (6) That the attorney is not regularly employed in the State of California.
- (7) That the attorney is not regularly engaged in substantial business, professional, or other activities in the State of California.
- (8) That the attorney agrees to be subject to the jurisdiction of the courts of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of California.
- (9) The title of the court and the cause in which the attorney has filed an application to appear as counsel pro hac vice in this state or filed a certificate pursuant to this section in the preceding two years, the date of each application, and whether or not it was granted.

3. **Connecticut** - The Connecticut Bar Association's Unauthorized Practice of Law Committee has an informal opinion holding that it would be an unauthorized practice of law for an attorney admitted only in New York to represent a party to a domestic arbitration held within Connecticut. By statute, representing a party to an international commercial arbitration does *not* constitute the practice of law.
4. **Florida** - Florida also held that representing a party in a securities arbitration based upon federal law constituted the practice of law in *Florida Bar v. Rapoport*, 845 So.2d 874 (Fla. 2003). An advisory opinion to this effect had previously been given in *The Florida Bar Re: Advisory Opinion On Non-lawyer Representation In Securities Arbitration*, No. 89-140 (July 3, 1997).⁵

(10) The name, address, and telephone number of the active member of the State Bar of California who is the attorney of record.

(d) Failure to timely file the certificate described in subdivision (c) or, absent special circumstances, repeated appearances shall be grounds for disqualification from serving as the attorney of record in the arbitration in which the certificate was filed.

(e) An attorney who files a certificate containing false information or who otherwise fails to comply with the standards of professional conduct required of members of the State Bar of California shall be subject to the disciplinary jurisdiction of the State Bar with respect to any of his or her acts occurring in the course of the arbitration.

(f) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, an attorney who is a member in good standing of the bar of any state may represent the parties in connection with rendering legal services in this state in the course of and in connection with an arbitration pending in another state.

(g) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, any party to an arbitration arising under collective bargaining agreements in industries and provisions subject to either state or federal law may be represented in the course of, and in connection with, those proceedings by any person, regardless of whether that person is licensed to practice law in this state.

⁵ This ruling has also resulted in a framework to allow out of state counsel to appear in arbitrations.

Rule 1-3.11. Appearance By Non-Florida Lawyer In An Arbitration Proceeding In Florida

(a) Non-Florida Lawyer Appearing in an Arbitration Proceeding in Florida. A lawyer currently eligible to practice law in another United States jurisdiction or a non-United States jurisdiction may appear in an arbitration proceeding in this jurisdiction if the appearance is:

- (1) for a client who resides in or has an office in the lawyer's home state; or
- (2) where the appearance arises out of or is reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice; and
- (3) the appearance is not one that requires pro hac vice admission.

Such lawyer shall comply with the applicable portions of this rule and of rule 4-5.5.

(b) Lawyer Prohibited from Appearing. No lawyer is authorized to appear pursuant to this rule if the lawyer:

- (1) is disbarred or suspended from practice in any jurisdiction;
- (2) is a Florida resident;
- (3) is a member of The Florida Bar but ineligible to practice law;
- (4) has previously been disciplined or held in contempt by reason of misconduct committed while engaged in representation permitted pursuant to this rule;
- (5) has failed to provide notice to The Florida Bar or pay the filing fee as required by this rule, except that neither notice to The Florida Bar nor a fee shall be required for lawyers appearing in international arbitrations; or
- (6) is engaged in a "general practice" as defined elsewhere in these rules.

(c) Application of Rules Regulating the Florida Bar. Lawyers permitted to appear by this rule shall be subject to these Rules Regulating the Florida Bar while engaged in the permitted representation, including, without limitation, rule 4-5.5.

(d) General Practice Prohibited. Non-Florida lawyers shall not be permitted to engage in a general practice pursuant to this rule. In all arbitration matters except international arbitration, a lawyer who is not admitted to practice law in this jurisdiction who files more than 3 demands for arbitration or responses to arbitration in separate arbitration proceedings in a 365-day period shall be presumed to be engaged in a "general practice."

(e) Content of Verified Statement for Leave to Appear. In all arbitration proceedings except international arbitrations, prior to practicing pursuant to this rule, the non-Florida lawyer shall

5. **Michigan** - Partnership Arbitration, an oddly named partnership composed of James H. McQuillan, J. Stephen Stout and Kyle Andrews,

file a verified statement with The Florida Bar and serve a copy of the verified statement on opposing counsel, if known. If opposing counsel is not known at the time the verified statement is filed with The Florida Bar, the non-Florida lawyer shall serve a copy of the verified statement on opposing counsel within 10 days of learning the identity of opposing counsel. The verified statement shall include:

(1) a statement identifying all jurisdictions in which the lawyer is currently eligible to practice law;

(2) a statement identifying by date, case name, and case number all other arbitration proceedings in which the non-Florida lawyer has appeared in Florida in the preceding 5 years; however, if the case name and case number are confidential pursuant to an order, rule, or agreement of the parties, this information does not need to be provided and only the dates of prior proceedings must be disclosed;

(3) a statement identifying all jurisdictions in which the lawyer has been disciplined in any manner in the preceding 5 years and the sanction imposed, or in which the lawyer has pending any disciplinary proceeding, including the date of the disciplinary action and the nature of the violation, as appropriate;

(4) a statement identifying the date on which the legal representation at issue commenced and the party or parties represented; however, if the name of the party or parties is confidential pursuant to an order, rule, or agreement of the parties, this information does not need to be provided and only the date on which the representation commenced must be disclosed;

(5) a statement that all applicable provisions of this rule have been read and that the verified statement complies with this rule;

(6) a certificate indicating service of the verified statement upon all counsel of record in the matter and upon The Florida Bar at its Tallahassee office accompanied by a nonrefundable \$250.00 filing fee made payable to The Florida Bar; however, such fee may be waived in cases involving indigent clients; and

(7) a verification by the lawyer seeking to appear pursuant to this rule.

In addition, the copy of the verified statement filed with The Florida Bar must contain the social security number of the non-Florida attorney. This information need not be supplied to opposing counsel.

was sued for the unauthorized practice of law in Circuit Court of Genesee County, #93-19858-CZ. The non-lawyer defendants were enjoined from assisting others from pursuing claims against Prudential Securities, Inc. in arbitration (*inter alia*).

6. **Ohio** - Representing a party before an NASD arbitration constitutes the unauthorized practice of law, *Disciplinary Counsel v. Alexicole, Inc.*, et al, 105 Ohio St. 3d 52 (2004)
7. **Virginia** - In Virginia's Unauthorized Practice of Law Opinion 200, "a foreign attorney who represents a party in an arbitration proceeding in Virginia is not representing a party before a 'tribunal', such an attorney is certainly 'practicing law' in Virginia." (Footnote omitted). However, Virginia has adopted American Bar Association Rule of Professional Conduct 5.5, which allows foreign lawyers to temporarily engage in the practice of law within the Virginia. That rule specifically covers arbitrations.

E. For states that have adopted the American Bar Association's multi-jurisdictional practice rules⁶ (or something similar), representing parties in an arbitration does

⁶ Model Rule 5.5: Unauthorized Practice Of Law; Multijurisdictional Practice Of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

- (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
- (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
 - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, ***may provide legal services on a temporary basis in this jurisdiction*** that:

- (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
- (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
- (3) are in or reasonably related to a pending or potential ***arbitration***, mediation, or other alternative dispute resolution proceeding

not constitute the unauthorized practice of law (if certain conditions are met, which vary slightly from jurisdiction to jurisdiction) even though it is the practice of law.⁷

1. Arkansas
2. Arizona
3. California
4. Colorado
5. Delaware
6. Florida
7. Georgia
8. Idaho
9. Indiana
10. Iowa
11. Louisiana
12. Maryland
13. Minnesota
14. Missouri
15. Nebraska
16. Nevada
17. New Jersey
18. New Mexico
19. North Carolina
20. North Dakota

in this or another jurisdiction, ***if 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 the forum requires *pro hac vice* admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires *pro hac vice* admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

[Emphasis added]

⁷ http://www.abanet.org/cpr/jclr/5_5_quick_guide.pdf

21. Oregon
22. Pennsylvania
23. South Carolina
24. South Dakota
25. Utah
26. Virginia

F. The following states are considering enacting the American Bar Association's multi-jurisdictional practice rules (or something similar):

1. Illinois
2. Massachusetts
3. Michigan
4. Montana
5. New Hampshire
6. New York
7. Ohio
8. Washington

III. A Connecticut court does not have the power to admit a foreign lawyer *pro hac vice* to conduct an arbitration, *In re The Application to Admit James W. Glatthaar, Pro Hac Vice*, 05-CBAR-2200 (10/24/2005) (attached).

A. Various people think this issue should be addressed by legislation amending Connecticut General Statutes §51-88.

B. An attorney may personally sue someone for the unauthorized practice of law under Connecticut General Statutes §51-88. A sample complaint is attached.

CBA UPL
OPINION
2002-02

UNAUTHORIZED PRACTICE OF LAW COMMITTEE

Informal Opinion 2002-02
Representation Before AAA Arbitration Panel

We are requested to opine on the propriety of a lawyer representing a corporation pursuing two claims against the State of Connecticut in an arbitration in Connecticut administered by the American Arbitration Association. Damages claimed are in excess of \$50 million. We are asked to assume that the dispute is governed by Connecticut law and that questions of state law are critical to the resolution of the matter. We are also asked to assume that the lawyer will advise his Connecticut client in settlement discussions. The lawyer is admitted in New York but not in Connecticut. The lawyer does not appear with local counsel. The lawyer may claim to act under a power of attorney as an attorney in fact. Does the lawyer's conduct as described in the inquiry constitute the unauthorized practice of law?

"[T]he decisive question is whether the acts performed [are] such as are commonly understood to be the practice of law." *In Re Darlene C.*, 247 Conn. 1, 15 (1998)(Borden, J. concurring) quoting from *Statewide Grievance Committee v. Patton*, 239 Conn. 251, 254 (1996). The courts articulate "that understanding on a case by case basis." *In Re Darlene C. supra*, at 15. "Because the language of the definition offers little guidance as applied to any particular set of facts, we are required to give content to the definition in each case based on our knowledge of the history, tradition, and experience of the practice of law – and what has commonly been considered to be the practice of law – in this state." *Id.* at 15-16.

Though there is no Connecticut authority on the question, courts in other states have held that a lawyer not admitted in the jurisdiction may not represent persons before arbitrators within the state. *The Florida Bar Re Advisory Opinion on Nonlawyer Representation In Securities Arbitration*, 696 So.2d 1178 (Fla. 1997) [securities arbitration]; *In The Matter of Creasy*, 198 Ariz. 539, 12 P.3d 215 (Ariz. 2000) [auto insurance claim arbitration]. *Birbower v. Superior Court*, 70 Cal. Rptr. 304 (1998) [Unauthorized practice statute applies to arbitration except for international commercial disputes and collective bargaining agreement disputes]. By statute and court rule California now permits arbitrators to admit out-of-state lawyers pro hac vice. Cal. Code Civ. P. § 1282.4; Cal. Supreme Court Rule 983.4.

The rules of the American Arbitration Assoc. do not govern a party's right to chose a representative. In Connecticut it is common for parties in labor-management dispute arbitrations, construction dispute arbitrations, and franchising agreement arbitrations to be represented by non-lawyers. Often the representation is provided by an officer or employee of a party, or by a union agent. The identity of the representative may be relevant to an analysis. Parties may prefer to use non-lawyers for reason of economy, efficiency, and specialized knowledge. Issues of facts and trade usage may be at the core of many disputes for which arbitration may have evolved as part of the structure used by members of a particular industry to govern conflicts. The matters may be conducted informally rather than as litigation which may involve discovery, pre-hearing issues, and extensive testimony. The traditional practices of parties in arbitration may also be relevant. See, *Pioneers in Dispute Resolution, A History of the American Arbitration Association*. Arbitration has been enshrined in Connecticut law for many years. See, "An Act for the more easy and effectually finishing of

controversies by Arbitration" (1753) incorporated in General Statutes of Connecticut Title XII, sec. 1 (1808) See also, *Mediation Practice Book 3* (Harry N. Mazadoorian, ed. 2002)

The New York lawyer is not an employee or officer of the party he represents and does not play a role similar to a union representative. He has been engaged because of his experience and legal knowledge. It is inevitable that he will be called upon to advise his client on issues of Connecticut law as the client advances its legal arguments and considers settlement prospects. The proceeding is not likely to be informal and we are informed that the proceeding will involve discovery, depositions, and briefing, as well as a trial of issues of fact. We think it likely, given the amount of money at stake, that the case will be litigated to the same extent that it would be in a trial court. In this context, it appears to us that the lawyer is engaged in the practice of law in Connecticut.

We do not have the authority to make binding factual or legal decisions. These decisions are best made by a court on an adequate record presented by the interested parties. We limit our role to a statement that in our opinion the New York lawyer is practicing law in Connecticut.

We are also asked if a person who holds a power of attorney may represent a person in an arbitration proceeding. It has been held that a person acting under a power of attorney is not thereby authorized by law to represent his principal as an attorney-at-law. *Long v. Delarosa*, 1995 WL 50275 (Conn. Super. 1995, Silbert, J.); *Drake v. Superior Court*, 26 Cal. Rptr. 2d 829, 21 Cal.App.4th 1826 (1994); *Christiansen v. Melina*, 857 P.2d 345 (Alaska 1993).

Disciplinary Counsel v.
Alexicole, Inc., et al.
105 Ohio St.3d 52 (2004)

DISCIPLINARY COUNSEL v. ALEXICOLE, INC., ET AL.

[Cite as *Disciplinary Counsel v. Alexicole, Inc.*,
105 Ohio St.3d 52, 2004-Ohio-6901.]

Unauthorized practice of law — Conduct enjoined.

(No. 2004-1585 — Submitted November 16, 2004 — Decided December 22,
2004.)

ON REPORT by the Board of Commissioners on the Unauthorized Practice of Law
of the Supreme Court, No. 02-06.

Per Curiam.

{¶ 1} On August 2, 2002, relator, Disciplinary Counsel, charged that respondents, Bandali Dahdah and Alexicole, Inc., had together engaged in the unauthorized practice of law by representing Ohioans in securities-arbitration proceedings. The parties thereafter submitted stipulations of fact and a waiver of notice and hearing pursuant to Gov.Bar R. VII(7)(C). After striking respondents' answer because it was not prepared and filed by a licensed attorney, however, the Board of Commissioners on the Unauthorized Practice of Law considered the cause on relator's motion for default. See Gov.Bar R. VII(7)(B). The board granted the motion for default and, after accepting the parties' separate motions to supplement the record, made findings of fact, conclusions of law, and a recommendation.

{¶ 2} Based on the parties' stipulations and relator's evidence in support of default, the board found that Alexicole is a Delaware corporation that Dahdah owns and controls. On October 31, 2000, Dahdah filed a Foreign Corporation Certificate for Alexicole in Massachusetts indicating that Alexicole engages in "securities arbitration." Dahdah is not and has never been an attorney admitted to

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practice law, granted active status, or certified to practice law in the state of Ohio pursuant to Gov.Bar R. I, II, VI, IX, or XI.

{¶ 3} Although Dahdah has not held himself out as a licensed Ohio attorney, he has, in conjunction with Alexicole, represented claimants in securities arbitration cases. One client, an Ohio resident whom Dahdah represented in an arbitration claim against McDonald Investments, Inc. before the National Association of Securities Dealers, complained to relator. In response to the client's allegations, Dahdah admitted that he regularly prepares statements of claims, conducts discovery, participates in prehearing conferences, negotiates settlements, and participates in mediation and arbitration hearings, all on behalf of Alexicole clients.

{¶ 4} The board found that respondents had thereby engaged in the unauthorized practice of law in Ohio and recommended that we issue an order enjoining respondents in the future as follows:

{¶ 5} "1. Respondents will not represent Ohio residents in securities arbitration matters and/or activities, including but not limited to, providing legal advice as to securities and/or securities arbitration claims, engaging in preparing statements of claims, preparing discovery, participating in pre-hearing conferences, participating in settlement negotiations, and attending mediation and/or arbitration hearings with or on behalf of claimants.

{¶ 6} "2. Unless Respondent Dahdah becomes an attorney at law licensed and in good standing to practice law in the state of Ohio, Respondent Dahdah will not provide legal advice to any person in Ohio, including but not limited to, advice regarding the filing of a claim for a securities violation, advice regarding a person's right as a claimant or defendant in a securities arbitration, lawsuit, or other legal or quasi-legal proceeding, including any terms and conditions of a settlement of any dispute.

{¶ 7} “3. Unless Respondent Dahdah becomes an attorney at law licensed and in good standing to practice law in the state of Ohio, Respondent Dahdah will not represent the interests or legal position of Alexicole, Inc. or any corporation before any legal or quasi-legal body, or in any legal action, settlement, or dispute in the state of Ohio.”

{¶ 8} We concur in the board’s findings and recommendation. Section 2(B)(1)(g), Article IV of the Ohio Constitution confers on this court exclusive jurisdiction over all matters related to the practice of law. The unauthorized practice of law consists of rendering legal services, including representation on another’s behalf during discovery, settlement negotiations, and pretrial conferences to resolve claims of legal liability, by any person not admitted to practice in Ohio. Gov.Bar R. VII(2)(A) and see, e.g., *Ohio State Bar Assn. v. Kolodner*, 103 Ohio St.3d 504, 2004-Ohio-5581, 817 N.E.2d 25 (negotiating to settle another’s debt-collection case is the practice of law), and *Disciplinary Counsel v. Brown*, 99 Ohio St.3d 114, 2003-Ohio-2568, 789 N.E.2d 210 (participating in pretrial conferences and depositions on another’s behalf is the practice of law). Moreover, a corporation cannot lawfully engage in the practice of law, and it cannot lawfully engage in the practice of law through its officers who are not licensed to practice law. *Cincinnati Bar Assn. v. Clapp & Affiliates Fin. Servs., Inc.*, 94 Ohio St.3d 509, 2002-Ohio-1485, 764 N.E.2d 1003.

{¶ 9} Respondents engaged in all the cited activities and thereby engaged in the unlicensed practice of law. Respondents are therefore enjoined from any further conduct that constitutes the unauthorized practice of law, as follows:

{¶ 10} 1. Respondents will not represent Ohio residents in securities arbitration matters and/or activities, including but not limited to providing legal advice as to securities and/or securities-arbitration claims, preparing statements of claims, preparing discovery, participating in prehearing conferences, participating

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in settlement negotiations, and attending mediation and/or arbitration hearings with or on behalf of claimants.

{¶ 11} 2. Unless Bandali Dahdah becomes an attorney at law licensed and in good standing to practice law in the state of Ohio, Dahdah will not provide legal advice to any person in Ohio, including but not limited to advice regarding the filing of a claim for a securities violation and advice regarding a person's right as a claimant or defendant in securities arbitration, a lawsuit, or other legal or quasi-legal proceeding, including any terms and conditions of a settlement of any dispute.

{¶ 12} 3. Unless Dahdah becomes an attorney at law licensed and in good standing to practice law in the state of Ohio, Dahdah will not represent the interests or legal position of Alexicole, Inc., or any corporation before any legal or quasi-legal body, or in any legal action, settlement, or dispute in the state of Ohio.

{¶ 13} Costs are taxed to respondent.

Judgment accordingly.

MOYER, C.J., RESNICK, F.E. SWEENEY, LUNDBERG STRATTON, O'CONNOR and O'DONNELL, JJ., concur.

PFEIFER, J., concurs but would also impose a \$500 fine.

Jonathan E. Coughlan, Disciplinary Counsel, and Stacy Solochek Beckman, Assistant Disciplinary Counsel, for relator.

VIRGINIA UPL
OPINION 200



Unauthorized Practice of Law

VIRGINIA UPL OPINION 200

Foreign Attorney Representing Corporation at Arbitration Hearings in Virginia

Your inquiry involves an attorney who is not licensed to practice law in Virginia, but who is licensed to practice law in Maryland and is also admitted in the Federal Court for the District of Maryland, the United States Court of Appeals for the Fourth Circuit, and the United States Supreme Court. The attorney represents an entity which is incorporated in Michigan, with regional offices in Pennsylvania, and is registered to do business in Maryland and Virginia. The current contract calls for interpretation under the laws of Pennsylvania and contains a mandatory arbitration agreement. Typically, these particular arbitrations do not utilize the common law of any state, but are commercial cases in which the Uniform Commercial Code is applied.

Under the facts you have presented, you have asked the committee to opine as to whether the foreign attorney can represent the corporation at arbitration hearings held in Virginia.

The Committee considered your inquiry at its December 14 meeting and has directed me to transmit its conclusions to you.

The committee is of the opinion that the foreign attorney is authorized to represent his client in an arbitration proceeding in Virginia if it would be incidental to the foreign attorney's representation of the client whom the attorney represents elsewhere as permitted by Va. S. Ct. R. pt. 6, §I (C).

The Committee is of the opinion that although a foreign attorney who represents a party in an arbitration proceeding in Virginia is not representing a party before a "tribunal"^[1], such an attorney is certainly "practicing law" in Virginia. Further, a foreign attorney, i.e, a non-Virginia licensed attorney, is treated as a "non-lawyer" for purposes of the Unauthorized Practice Rules. Va. S. Ct. R., pt. 6, §I (C):

The term "non-lawyer" means any person, firm, association or corporation not duly licensed or authorized to practice law in the Commonwealth of Virginia. However, the term "non-lawyer" shall not include foreign attorneys who provide legal advice or services in Virginia to clients under the following restrictions and qualifications:

1. Such foreign attorney must be admitted to practice and in good standing in any state in the United States; and
2. The services provided must be on an occasional basis only and incidental to representation of a client whom the attorney represents elsewhere; and
3. The client must be informed that the attorney is not admitted in Virginia.

A lawyer who provides services not authorized under this rule must associate with an attorney authorized to practice in Virginia.

Nothing herein shall be deemed to overrule or contradict the requirements of Rules of this Court regarding foreign attorneys admitted to practice in the courts of the Commonwealth of Virginia including the association of counsel admitted to practice before the courts of this Commonwealth.

A lawyer who provides services as authorized under this rule, or who is admitted *pro hac vice* under Rule 1A:4 shall, with regard to such services or admission, be bound by the disciplinary rules set forth in the Virginia Code of Professional Responsibility.

Failure of the foreign attorney to comply with the requirements of these provisions shall render the activity by the attorney in Virginia to be the unauthorized practice of law.

The committee has previously opined that it is not the unauthorized practice of law for a non-Virginia licensed attorney to present evidence and argue matters before of law before an arbitration panel of the American Arbitration Association in Virginia in order to represent a client from the attorney's jurisdiction in a franchise contract dispute. UPL Op. 92 (1986).

Therefore, the committee is of the opinion that the foreign attorney is authorized to represent his client in an arbitration proceeding in Virginia if it would be incidental to the foreign attorney's representation of the client whom the attorney represents elsewhere as permitted by Va. S. Ct. R. pt. 6, § I (C).

Committee Opinion
January 22, 2001

^[1]“Tribunal” is a defined term in the Unauthorized Practice Rules:

The term “tribunal” shall include, in addition to the courts and judicial officers of Virginia or of the United States of America, the State Corporation Commission of

Virginia and its various divisions, the Virginia Workers' Compensation Commission, and the Alcoholic Beverage Control Board, or any agency, authority, board, or commission when it determines the rights and obligations of parties to proceedings before it, as opposed to promulgating rules and regulations of general applicability. Such term does not include a tribunal established by virtue of the Constitution or laws of the United States, to the extent that the regulation of practice before such tribunal has been preempted by federal law, nor does it include a tribunal established under the Constitution or laws of Virginia before which the practice or appearance by a non-lawyer on behalf of another is authorized by statute.

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In re The Application to Admit
James W. Glatthaar, Pro Hac Vice,
05-CBAR-2200 (10/24/2005)

DOCKET NO. CV 05-4015630 : SUPERIOR COURT
IN RE: THE APPLICATION : JUDICIAL DISTRICT OF HARTFORD
TO ADMIT ATTORNEY JAMES W. :
GLATTHAAR *PRO HAC VICE* :
: AT HARTFORD
: OCTOBER 18, 2005

MEMORANDUM OF DECISION

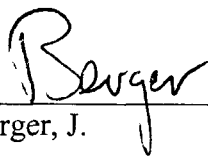
The present application seeks permission for James W. Glatthaar, a member of the bar of the state of New York, to appear pro hac vice in a Connecticut arbitration. The application was filed pursuant to Practice Book § 2-16. An objection has been filed to the application on several grounds but mainly because Practice Book § 2-16 does not apply to arbitrations.

Practice Book § 2-16 states, in relevant part, “[a]n attorney who is in good standing at the bar of another state, the District of Columbia, or the commonwealth of Puerto Rico, may, upon special and infrequent occasion and for good cause shown upon written application presented by a member of the bar of this state, be permitted in the discretion of the court to participate to such extent as the court may prescribe in the presentation of a cause or appeal in any court of this state . . .” (Emphasis supplied.) This section clearly only mentions matters in court; it makes no reference to arbitrations outside court.

*1/5/10/24/05
Blackley + Schmidt
Brown + Wilsh, PC
Sept. 17, 2005
JWS*

OFFICE OF THE CLERK
SUPERIOR COURT
HARTFORD, CT
2005 OCT 24 P 2:42
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Practice Book § 2-2 states: “[n]o person shall be admitted as an attorney except as herein provided.” Notwithstanding the credentials of the applicant, or the appropriateness of his request, (or even the fact that he could seek this pro hac vice permission to have the arbitration decision confirmed or vacated), Chapter two of the Practice Book contains no provision which would authorize this court to allow Attorney Glatthaar to represent his clients in a Connecticut arbitration independent of the Superior Court. Accordingly, the objection is sustained.



Berger, J.

**SAMPLE
UPL
COMPLAINT**

DOCKET NO: CV-05-4006300-S : SUPERIOR COURT
HOUSTON PUTNAM LOWRY : JD OF WATERBURY
VS. :
EDWARD I. YATKOWSKY, ESQ. : AUGUST 18, 2005

AMENDED COMPLAINT PURSUANT TO §51-88(C)

Pursuant to Practice Book §10-59, Houston Putnam Lowry amends his complaint as of right as follows:

1. Houston Putnam Lowry been a member of the Connecticut bar since 1980 and remain in good standing.
2. Houston Putnam Lowry is a member of the law firm of Brown & Welsh, P.C. (a Connecticut professional corporation engaged in the practice of law).
3. Houston Putnam Lowry is counsel of record for Southhaven Associates, LLC in an arbitration entitled *Southhaven Associates LLC v. Plaza Wines & Spirits, Incorporated (tenant), David Rosen (guarantor), Kenneth Rosen (guarantor)* commenced under the auspices of the American Arbitration Association.

4. A true and correct copy of the initial arbitration demand is attached as Exhibit 1 to the original complaint in this action.

5. The situs of the arbitration is Waterbury, Connecticut, although the parties have subsequently agreed to move the situs to Hartford.

6. Edward I. Yatkowsky, Esq. is a member of the New York bar, but not a member of the Connecticut bar. This information was obtained from the Connecticut Judicial Department's web site.

7. Edward I. Yatkowsky, Esq. appeared and defended the defendants in this arbitration until this action was brought, including in an administrative conference with the American Arbitration Association.

8. The Connecticut Bar Association's Unauthorized Practice of Law Committee has ruled such activity constitutes the unauthorized practice of law.

9. A true and correct copy of that opinion is attached as Exhibit 2 to the original complaint.

10. On or about June 20, 2005, Houston Putnam Lowry advised Edward I. Yatkowsky, Esq. that representing a party in this action would constitute an unauthorized practice of law.

11. A true and correct copy of this letter is attached as Exhibit 3 to the original complaint.

12. Edward I. Yatkowsky, Esq. took no action until this lawsuit was filed with the Waterbury Superior Court.

13. Upon information and belief, Edward I. Yatkowsky, Esq. has ceased representing the defendants in the arbitration.

THEREFORE, Houston Putnam Lowry prays for:

1. A temporary injunction to prevent Defendant Edward I. Yatkowsky, Esq. and Defendant's officers, directors, representatives, servants, agents, employees, and others acting in active concert or participation with them from appearing before any arbitration panel sitting within the State of Connecticut, including the *Southhaven Associates LLC v. Plaza Wines & Spirits, Incorporated (tenant), David Rosen (guarantor), Kenneth Rosen (guarantor)* arbitration panel.

2. A permanent injunction to prevent Defendant Edward I. Yatkowsky, Esq. and Defendant's officers, directors, representatives, servants, agents, employees, and others acting in active concert or participation with them from appearing before any arbitration panel sitting within the State of Connecticut, including the *Southhaven Associates LLC v. Plaza Wines & Spirits, Incorporated (tenant), David Rosen (guarantor), Kenneth Rosen (guarantor)* arbitration panel.

3. Edward I. Yatkowsky, Esq. be held in contempt of this court pursuant to Connecticut General Statutes §51-88(c).

4. A declaratory judgment that Edward I. Yatkowsky, Esq.'s actions constitute the unauthorized practice of law in Connecticut.

5. Such other and further relief as the Court may deem appropriate and just.

HOUSTON PUTNAM LOWY
PLAINTIFF

by: _____

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