



Jeff Geiger Counters

Foreign Attorneys in Virginia?

By: Jeff Geiger. Tuesday, October 4th, 2011

Given the nationalization (and globalization) of various elements of our society over the past sixty years (e.g., WalMart, network television, interstate highways, Hollywood), the legal profession stands in stark contrast. While, to many, the crossing of a state border is an artificial construct, states have maintained a hold on the practice of lawyers, regulating anyone, even licensed attorneys from another jurisdiction, to practice in the state.

Still, the ascendancy of the federal government and the gradual erosion of the significance of states have served to ameliorate some of the distinctions between a Virginia attorney and a North Carolina attorney. Here's what makes sense: in an information economy in which very competent law firms and lawyers practice in multiple jurisdictions and often engage in very discrete specialties, the foundation for controlling the legal profession, e.g., insuring that the public is well served, may be less relevant. Can you really say that a North Carolina attorney could not bone up on the necessary Virginia law issues and provide advice to a client or litigate a matter in Virginia courts?

Still, what also make sense is that the state retains control over who is practicing Virginia law. Yes, the North Carolina attorney can likely acquit herself quite well. But the protection of the public requires a balance between allowing a trans-border practice and insuring control over a core function of our three-branched government.

To that end, the Virginia State Bar issued recently **Legal Ethics Opinion 1856**, which serves to clarify the role of so-called "foreign attorneys" practicing in Virginia. In summary, the Committee interpreted **Rule 5.5** and concluded that: "foreign lawyers who are licensed to practice in other U.S. jurisdictions and based in the multi-jurisdictional law firm in Virginia would not be engaging in unauthorized practice of law in violation of Rule 5.5 so long as they limited their practice to the law of the jurisdictions where they are licensed, to federal law not involving Virginia law, or to temporary and occasional practice as authorized" under Rule 5.5.

I strongly predict that the practice of law will become more national in scope in the coming decades to reflect our global perspectives on commerce and society. While I expect litigation will remain the province of state-licensed lawyers, sophisticated transactional work will become more and more commoditized and capable of being handled in other states or even abroad.

I welcome your thoughts.

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