

**STATE BAR OF NEVADA  
STANDING COMMITTEE ON  
ETHICS AND PROFESSIONAL RESPONSIBILITY**

**Formal Opinion No. 40  
March 7, 2008**

**Background**

The Committee has received a request for an opinion from a lawyer admitted in another state but not in Nevada whether his representation of social security claimants in Nevada, without first being admitted to the practice of law in Nevada, would constitute the unauthorized practice of law in violation of the Supreme Court Rules or Rules of Professional Conduct. The Social Security Act and the Social Security Administration's regulations under that act permit the representation of claimants by attorneys who are not admitted to practice in the state in which they reside and provide such representation

**Question Presented**

Whether an attorney admitted to practice in another state but not in Nevada violates Supreme Court Rule 42 and/or Rule of Professional Conduct 5.5 by representing claimants in proceedings before the Social Security Administration conducted within the State of Nevada.

**Answer**

No. The representation is permitted as an express exception to the Supreme Court Rules and Rules of Professional Conduct generally prohibiting the unauthorized practice of law in Nevada, but subject to the limitations prescribed thereby.

**Authorities**

Supreme Court Rule 42  
Rule of Professional Conduct 5.5  
42 U.S.C.A. § 406 (1999)

**Discussion**

Nevada Rule of Professional Conduct 5.5(b) provides:

A lawyer who is not admitted in this jurisdiction, but who is admitted and in good standing in another jurisdiction of the United States, does not engage in the unauthorized practice of law in this jurisdiction when:

- (1) The lawyer is authorized to appear before a tribunal in this jurisdiction by law or order of the tribunal or is preparing for a proceeding in which the lawyer reasonably expects to be so authorized.

A lawyer not admitted to practice law in the state of his residence may be authorized to represent claimants in adjudicative proceedings before the Social Security Administration. The Social Security Act, as amended, provides in part:

An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence *or* before the Supreme Court of the United States *or* the inferior Federal courts shall be entitled to represent claimants before the Commissioner of Social Security.

42 U.S.C.A. § 406(a)(1) (1999) (emphasis added).

Thus, if an attorney is not admitted to practice in Nevada but is admitted to practice in his state of residence or before the US Supreme Court or other US federal courts, his representation of Social Security claimants before the Commissioner of Social Security is authorized by the law and regulations of the Social Security Administration and is not prohibited by Rule 5.5(a).

Rule of Professional Conduct 5.5(c), however, provides a further limitation:

Notwithstanding the provisions of paragraph (b) of this Rule, a lawyer who is not admitted to practice in this jurisdiction shall not represent a client in this state in an action or proceeding governed by Supreme Court Rule 42 unless the lawyer has been authorized to appear under Supreme Court Rule 42 or reasonably expects to be so authorized.

The representation contemplated by this opinion is not governed by Supreme Court Rule 42, since that rule provides in part:

(a) This rule applies to:

...

- (2) All actions or proceedings pending before an administrative agency or governmental body in this state, *unless that agency or governmental body provides otherwise.*

Supreme Court Rule 42(a)(2) (emphasis added). Thus, the attorney admitted to practice in another state but not in Nevada is not required, in proceedings before the Commissioner of Social Security, to apply for the approval of the Supreme Court of Nevada as generally required by that rule.

## **Conclusion**

Therefore, an attorney not authorized to practice law in Nevada does not violate Rule of Professional Conduct 5.5 or Supreme Court Rule 42 by representing a claimant in proceedings before the Social Security Administrator so long as:

- (1) He is admitted to practice in the state of his residence, before the Supreme Court of the United State or before another US court; and
- (2) He does not establish an office or regular presence in the State of Nevada for the practice of law (Rule of Professional Conduct 5.5(d)(2)).

It should be noted that the laws and regulations governing the Social Security Administration also permit the representation of claimants in proceeding before the Commissioner of Social Security by “non-attorneys.” See 42 U.S.C.A. § 406(a) (1999). This opinion does not and should not be construed to address the question whether such representation by persons other than attorneys constitutes the unauthorized practice of law within the meaning of NRS 7.285. Interpretation of that or any other statute is beyond the purview of this committee’s authority. The person requesting this opinion, however, is an attorney subject to the Nevada Rules of Professional Conduct and the disciplinary jurisdiction of the Supreme Court of Nevada and the State Bar of Nevada. See Rule of Professional Conduct 5.5(e).

This opinion is issued by the Standing Committee on Ethics and Professional Responsibility of the State Bar of Nevada, pursuant to SCR 225. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, its board of governors, any persons or tribunals charged with regulatory responsibilities, or any member of the state bar.