

## **2024 NJSBA Fall Conference**

### **Blurred Lines and Ethical Boundaries**

Some ethical boundaries are obvious. Others are blurry. One example is when a lawyer invests in or becomes a business partner of the client. Investing in a client's business is not an ethical violation on its own, though lawyers who acquire the stakes are likely targets of malpractice or ethical complaints. The act leaves attorneys vulnerable to claims that they placed their own self-interest before that of their clients, violating not only their ethical but also their fiduciary obligations.

Join Michael McCormick, director and counsel of the New Jersey Lawyers' Fund for Client Protection, and esteemed practitioners as they provide information on the latest pitfalls for lawyers who do business with their clients.

Topics include:

- The Fund's experience with respondent attorneys who became business or investment partners with their clients
- The slippery slope to Ponzi schemes
- The danger of blurring the lines between attorneys, investment advisors and tax accountants
- Prohibitions on multi-disciplinary ventures that include legal services
- Navigating the Rules of Professional Conduct related to doing business, including lending or borrowing funds with a client
- The Fund's jurisdiction: attorney-client and fiduciary relationships versus investing or doing business with someone who happens to be an attorney

*Moderator/Speaker:*

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**NEW JERSEY STATE BAR ASSOCIATION**  
**INSTITUTE FOR CONTINUING LEGAL EDUCATION**  
**ETHICS**

**Blurred Lines and Ethical Boundaries**

**Monday, November 18, 2024, 2:50 to 4:30 pm**

**Character and Fitness Committee for Bar Applicants**

Bar Admission candidates get flagged for the following:

- Incomplete documents (business incorporations, civil suits, credit reports, municipal tickets, real estate license, broker license, notary public status)
- Credit issues (non-payment, loan deferrals)
- Undergraduate/law school issues (plagiarism, academic issues, underage drinking)
- Family law issues (divorce proceedings, custody proceedings)
- Multiple criminal proceedings
- Failure to disclose issues to law school/undergraduate/graduate institutions.
- Lack of remorse/candor at hearings

Be open, disclose as much as you can, make sure all documents are uploaded to avoid delay.

**Client Protection Fund**

See Rule Rule 1:28 - New Jersey Lawyers Fund for Client Protection for details on Fund

Lawyers are the only profession that maintains such a fund

Fund exists to return client trust monies that have been stolen by disciplined or deceased New Jersey attorneys; 17 S.C. committees; Fund is only one with mission set forth by Court Rule

Jurisdiction comes from discipline or death

Types of claims: personal injury settlements; real estate deposits; mortgage proceeds (unpaid at closing); unearned retainers (difference between compensable & non-compensable – no work done vs. malpractice); estate assets & proceeds; matrimonial matters; sham investments (but not bad investments)

Most common reasons for lawyers to get caught up with the Fund:

- Mostly solo practitioners (3/4 of NJ bar) because it is harder to steal with other eyes on account
- Greed/pathological personality (smallest number)

- Addiction: drug/alcohol addiction.
- Gambling: More difficult to spot than addiction or health issues.
- Illness: Mental and physical illness; Illness of family member
- Death (must return that which is not earned)
- Ponzi schemes
- Theft for lifestyle: divorce, child college, destination weddings, runaway consumerism

Client must prove the following:

- Attorney client relationship (retainer)
- Receipt of money in trust/business account (checks, cash receipts, bank statements, testimony)
- Theft by Respondent and/or for Respondent's benefit (went to family members)
- Dishonest conduct (not just that money is missing)

How proven:

- Forensic accounting
- Subpoena power
- Hearings
- Investigators
- File/record review

What is NOT compensable:

- Legal malpractice
- No theft by respondent (even if others stole)
- Fee disputes (these matters go to fee arbitration)

Subrogation Department of the Fund- claws back monies paid out by the Fund

- Files complaints in court
- Pursues banks (forged endorsements)
- Pursues title companies (approved agents)
- Pursues law partners (negligent supervision)
- Pursues insurance companies
- Pursues respondent lawyers and their spouses/family members (payment plans, assets, credit reports)
- Comprehensive enforcement program; judgment liens (for when property sold);
- Claims are nondischargeable in bankruptcy
- Pursues estates

Succession Planning importance

- You do not want your family to receive notification of unethical behavior post death
- If you are a solo, designate someone as a law practice successor

Difficult claims

- Immigration
- Federal jurisdiction (is it a New Jersey claim?)

- Sophistication of claimants (possible collusion?)
- Immigration status not a factor
- Crime not necessarily a factor (can pay back inmates, etc.) but unclean hands/ill gotten gains can be a factor
- Is attorney client relationship established—is relationship related to legal work or an investment scheme?
- Is money lost part of loan? Investment from settlement proceeds?
- Theft by staff (associate/secretary)

**The potential ethical problems in the practice of law.**

**Statistics**

According to the ABA, 6% of all attorneys will get sued every year. 1/3 of those lawsuits will result in a settlement or a verdict against the attorney. Lawyers, unlike doctors, do not get the benefit of the doubt from the average juror.

Area of practice at most risk of a legal malpractice claim:

Real Estate.....	20%
Personal Injury.....	16%
Family Law/Divorce.....	12%
Trusts and Estates.....	11%
PI Defense.....	10%
Other.....	31%

**Source of Malpractice Claim**

Intentional Wrongs:	10%
Substantive Errors:	45%
Client Relations:	15%
Administrative Errors:	30%

**Top 5 Mistakes**

1. Failure to know the law = 11%
2. Planning Error = 9%
3. Poor discovery/investigation = 9%
4. Failure to run calendar = 7 %
5. Failure to file documents = 9%

**Blurred Lines**

There are some common areas where lawyers get in trouble where they cross the line beyond legal counsel.

Getting involved in business ventures with your clients. When the deal goes bad, all facts will be construed against attorney and in favor of clients.

Transacting with clients creates the opportunity for unfair advantage. The lawyer has a position of trust and confidence. The lawyer may be more sophisticated and may have inside knowledge

Loaning money to clients or getting loans from clients

Co-investing with clients in real estate, assets or stock

Asset purchase/sale from clients for a business, goods, services or property.

Providing compensated non-legal services to clients

Especially when a lawyer owns a business and refers clients to it or invests client money in it

Getting drafted by boards, such as Homeowners Associations, to provide legal counsel and be the unofficial board counsel.

Helping clients that are suspended or incarcerated (and cannot run their business) run their business. [A New Jersey lawyer whose client, an owner of the escort service, was arrested, took over the business. The lawyer kept it going for months before the business flagged and the company was dissolved. The lawyer was accused of money laundering. Prosecutors also charged the lawyer with receiving as much as \$5,000 a week in cash payments from the proceeds of the escort service].

Providing investment advice to clients.

Handling estate matters for your own family. As the lawyer in the family, this role often goes to you, but the line gets blurred as to what you are entitled to in fees and what you are entitled to in the estate distribution.

Keeping a regular client happy. You will be asked to handle matters that are outside your comfort zone. You will be asked to do things that test the ethical boundaries.

Having a real estate practice while also having a law license. The penalties for mistakes in the two professions are not the same.

Having a financial services license while also having a law license. The penalties for mistakes in the two professions are not the same.

Representing more than one person in a matter—conflicts will arise.

Representing a husband and wife in a matter—a divorce or separation can complicate things.

Representing a family business—who can make the decisions.

Not having a full understanding of the tax implications of a legal proceeding.

Not having a full understanding of the immigration implications of a legal proceeding.

Providing advice on states other than New Jersey or representing clients on multi-jurisdictional matters—laws are not the same.

Representing family members, friends or romantic partners.

## **New Jersey Rules of Professional Conduct**

### **RPC 1.8. Conflict of Interest: Current Clients; Specific Rules**

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel of the client's choice concerning the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) Except as permitted or required by these rules, a lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client after full disclosure and consultation, gives informed consent.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent, or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and

(3) a non-profit organization authorized under R. 1:21-1(e) may provide financial assistance to indigent clients whom it is representing without fee.

### **Avoid the Temptation to Dabble**

Learning to say “NO” to what you do not know. The combination of the narrowing of the legal profession along with the temptation to dabble leads to a malpractice claim. Increased specialization and boutique practices have developed because of the growing complexity of the law (such as FMLA, HIPPA's, Tort Claim issues, Immunities, Arbitration clauses, Increased government regulation, Sarbanes-Oxley, etc.). There has also been an increase in the number of law firms actively advertising for and engaged in legal malpractice claims. I anticipate that in the future there will be lawyers advertising for disgruntled clients whose lawyers did not settle for the “full value of their claim”.

The temptation to dabble comes from increased competition from more attorneys, competition from out of state firms (NY/PA abrogation of the bona fide office rule) and “mega” firms. There are also fewer clients because of business consolidation, especially in the banking, accounting, real estate and medical fields.

### **Common Pitfalls**

Estate Planning

Real Estate (razor thin margins)

Out of state cases taken pre-suit

Federal Tort Claims Act Cases

Matrimonial cases

Tangential Issues that come up in Personal Injury cases (Bankruptcy, Divorce, Tax issues, Disability issues, health care lien issues, immigration issues)

### **What to Do?**

Know your strengths. Know your limitations. Otherwise, your client will look to you for damages. A client will more likely come back to you for advice if you previously referred them to a lawyer with the appropriate area of expertise. This also allows you

to build a referral relationship with the lawyers you refer cases to that are outside your area of expertise.

You can still get paid if you refer to a certified specialist under Rule 1:39. See also Rule 1:39-6(d) and Advisory Opinion 613. But see Opinion 745!?!?

## **Retainers**

Required on every case for every potential client. It gives you protection on the scope of your representation. In writing with full explanation of scope and limits.

Issues come up with retainers on return clients, friends/family, multiple parties and accidental retentions.

The issue of accidental retention: When an existing client talks to you about other legal issues when you are discussing the case you are handling for them.

What is permissible in a retainer? See Rule 1.5(c) and new contingency fee Rule 1:21-7. Note that it applies only to personal injury matters.

Contingency Fee—must offer an hourly rate.

Hourly Retainers-See Rule 1.5. Make clear what you will charge for, when you will bill, how you will bill and who you will bill.

Who is bound? See *Staron v. Weinstein*, 305 N.J. Super 236 (App. Div. 1997) (Of counsel's use of a retainer is "apparent authority" to bind the law firm even though the client was hiring the lawyer and not the law firm.

Accidental Retention: verbal conversations, consultations, accompanying a family member or friend to a legal proceeding, writing a letter for a friend, blogs.

Be especially vigilant of agreements with 3<sup>rd</sup> parties through releases (agreement of firm and client to indemnify defendant), Letters of Protection (do you represent the client or the doctor?) and Loans on Settlements (do you represent the client or the loan company)

Exit Clauses: Do you have an obligation to appeal a no cause or summary judgment? See Rule 1:11-2.

## **Scope of Representation**

Example of Expectations:  
Real Estate closings



Not often used.

If dispute re: zoning ... what is expectation of client?

Non-return of deposit ... what is expectation of client?

Appeals ...

Land use ...

**MAKE CLEAR YOUR SCOPE IN YOUR RETAINER!!!**

Do you represent the principals? See Petit-Clair v. Nelson, 344 NJ Super 538 (App. Div. 2001) (Attorney who enters into an agreement to represent the corporation may establish an attorney/client relationship with the principals of the business where the retainer is not expressly limited and the dealings with the client are through the individuals)

### **Communication Issues**

RPCs require all communications to be truthful, accurate and complete. Any misleading information to the client is actionable.

NOTE: A missed statute is not unethical. It is malpractice. Covering up for a missed statute is unethical. The cover-up is usually worse than the crime.

Good habits: Return calls (even if it has to be done after hours)! Note file EVERY time you speak with a client, adjuster, doctor or the courts on a file—have your staff get into the same habit. Deliver the bad news when it happens—helps later.

Good habits: Forward every key document to the client: offers/denials, motions, medical reports/bills. See RPC 1.4 (c)

### **Settlements**

Authority: Actual authority? Do what you think is best. Acceptance before a child support lien emerges. Duty to pay liens/unpaid medicals/co-payments and deductibles

Put all settlements in writing with disclaimer for unknown medicals/costs/liens being client's responsibility.

Tax implications of a settlement: Do not give advice—tell client to speak to their accountant. Could be a dual citizen. Could be for lost income.

### **Staff Infection Issues**

Must train, review and supervise staff. Have a calendar system. Conduct inventories regularly. Encourage questions. Emphasize importance of mail

receipt, mail recording and quick distribution to lawyer of motions/to client of dates.

Must be wary of what the staff communicates to clients (especially the ones that call on a constant basis).

Be wary of any susceptibility to lose or misplace files or documents.

## **Claims**

When does a problem become a potential claim? What is a risk your insurance carrier needs to know? Do you report everything?

Risks of not reporting: Denial, cancellation and non-renewal.

If there is a claim, what changes did you make to avoid another claim?: Change of staff, change of office policy, new reminder system, new supervisor, etc.

Claims issues: Senior attorneys, part time attorneys, of counsel, new lawyers, mergers, etc.

## **Avoiding Ethics Complaints**

Audits: You may want to hire an accountant AND a lawyer. See In Re Wade, DRB 20-274 (N.J. Jun. 28, 2021)

Investigation does not equal complaint—most complaints/queries do not go anywhere once an investigation is commenced—communicate with the ethics committee!

A call from Ethics investigator is your opportunity to explain, not go to battle.

The goal of an ethics investigator is to determine if there is clear and convincing evidence of ethical misconduct—most inquiries look for a basis to avoid a finding of misconduct.

If a complaint is filed, hire a lawyer after you consult with your malpractice carrier. Note that malpractice does not always equal an ethics violation and an ethical violation does not always result in malpractice.

Common ethics violations:

- Failure to communicate with client
- Conflict of interest

- Trust account errors
- Poor retainer language
- Treating client with a lack of respect (easy to avoid/sometimes to remedy)
- Failure to begin or end a client relationship properly

Things to avoid:

- Do not engage in business with a client
- Lax staff supervision/too much delegation to staff
- Providing advice to client on matters outside what you are representing them for
- Improper solicitation/gifts to referral sources
- Client loans
- Personal relationship with client- no romance/refer family to other lawyers

New Jersey had been one of the few states where disbarment was permanent. That changed with the October 15, 2024 determination by the Supreme Court. The Court's determinations allow disbarred attorneys to file a petition for reinstatement after a five-year period if they have satisfied a series of requirements designed to evaluate whether they now possess the necessary competency, integrity, and character to practice law in New Jersey. The readmission process also includes case-specific safeguards designed to protect the public and retain confidence in the legal profession.

Along with approving the recommendation to allow for the possibility of reinstatement, the Court also determined that petitioners must:

- bear the burden of proof in demonstrating clear and convincing evidence of rehabilitation in readmission proceedings.
- earn a passing score on the New Jersey Bar Exam no more than one year prior to the filing of their application and pass the Multistate Professional Responsibility Examination (MPRE).
- complete Continuing Legal Education courses specified by the Court before applying for readmission.
- provide notice to all individuals whose complaints resulted in disbarment, including those whose complaints were docketed but dismissed as a result of the disbarment.
- repay all aggrieved individuals.

The Court's determination also allows it to use its discretion in imposing any number of conditions necessary to maintain the public trust.

Should the Court deny a petition for readmission, the disbarred attorney must wait two years to reapply. The Court also retains the authority to impose permanent disbarment in egregious circumstances, and to order that no further applications be permitted from a specific petitioner.

Petitions for readmission will be adjudicated by a new board, the Attorney Regulatory Board, which will make recommendations to the Court.

## **Duty of Competence and ESI**

### **RPC 1.1 Competence**

A lawyer shall not:

- (a) Handle or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence.
- (b) Exhibit a pattern of negligence or neglect in the lawyer's handling of legal matters generally.

The law generally follows science, society and economics at slightly behind the technology curve. It takes a while for the law to adjust to changes in society. As practitioners, we are not allowed that luxury and must keep up to date with the changes in the way people communicate, store information and conduct business.

The 2012 Amendments to the ABA Model Rules of Professional Conduct requires lawyers to “keep abreast of changes in the law and its practice” and this includes “the benefits and risks associated with technology”.

California’s standing committee on professional responsibility and conduct issued an opinion (No. 2015-193, June 30, 2015) stating that lawyers should have the technical competence and skill—either by themselves, co-counsel or expert consultants- assess ESI discovery needs and issues, to implement appropriate ESI preservation procedures and to analyze and understand a client’s ESI systems and storage. This can be an expensive proposition for a small firm or solo practitioner.

Lawyers must be sufficiently competent to comply with discovery requests for ESI. The Federal Rules of Civil Procedure were amended specifically to address a litigant’s rights with regard to ESI.

### **RPC 5.3 Responsibilities Regarding Nonlawyer Assistance**

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) every lawyer, law firm or organization authorized by the Court Rules to practice law in this jurisdiction shall adopt and maintain reasonable efforts to ensure that the conduct of nonlawyers retained or employed by the lawyer, law firm or organization is compatible with the professional obligations of the lawyer.
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
  - (1) the lawyer orders or ratifies the conduct involved;

- (2) the lawyer has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; or
- (3) the lawyer has failed to make reasonable investigation of circumstances that would disclose past instances of conduct by the nonlawyer incompatible with the professional obligations of a lawyer, which evidence a propensity for such conduct.

**RPC 1.7 Conflict of Interest: General Rule**

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) each affected client gives informed consent, confirmed in writing, after full disclosure and consultation, provided, however, that a public entity cannot consent to any such representation. When the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved;
- (2) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (3) the representation is not prohibited by law; and
- (4) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

**RPC 1.8 Conflict of Interest: Current Clients; Specific Rules**

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

- (1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be understood by the client;
- (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel of the client's choice concerning the transaction; and

- (3)** the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
- (b)** Except as permitted or required by these rules, a lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client after full disclosure and consultation, gives informed consent.
- (c)** A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent, or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.
- (d)** Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
- (e)** A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
- (1)** a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
  - (2)** a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and
  - (3)** a legal services or public interest organization, a law school clinical or pro bono program, or an attorney providing qualifying pro bono service as defined in R. 1:21-11(a), may provide financial assistance to indigent clients whom the organization, program, or attorney is representing without fee.
- (f)** A lawyer shall not accept compensation for representing a client from one other than the client unless:
- (1)** the client gives informed consent;
  - (2)** there is no interference with the lawyer's independence of professional judgment or with the lawyer-client relationship; and
  - (3)** information relating to representation of a client is protected as required by RPC 1.6.
- (g)** A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or no contest pleas, unless each client gives informed consent after a consultation that shall include disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.
- (h)** A lawyer shall not:
- (1)** make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client fails to act in accordance with the lawyer's advice and the lawyer nevertheless continues to represent the client at the client's request. Notwithstanding the existence of those two conditions, the lawyer shall not make such an agreement unless permitted by law and the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advise of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may: (1) acquire a lien granted by law to secure the lawyer's fee or expenses, (2) contract with a client for a reasonable contingent fee in a civil case.

(j) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

(k) A lawyer employed by a public entity, either as a lawyer or in some other role, shall not undertake the representation of another client if the representation presents a substantial risk that the lawyer's responsibilities to the public entity would limit the lawyer's ability to provide independent advice or diligent and competent representation to either the public entity or the client.

(l) A public entity cannot consent to a representation otherwise prohibited by this Rule.

Regarding competency, be wary of unauthorized practice of law violations. The internet crosses state and national borders. Persons in California may be relying on your interpretation of law as a New Jersey or New York licensed attorney. The ethics rules prohibit the practice of law in jurisdictions where a lawyer is not admitted to practice. See NJ RPC 5.5

### **RPC 5.5 Lawyers Not Admitted to the Bar of This State and the Lawful Practice of Law**

(a) A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

(b) A lawyer not admitted to the Bar of this State who is admitted to practice law before the highest court of any other state, territory of the United States, Puerto Rico, or the District of Columbia (hereinafter a United States jurisdiction) may engage in the lawful practice of law in New Jersey only if:

(1) the lawyer is admitted to practice pro hac vice pursuant to R. 1:21-2 or is preparing for a proceeding in which the lawyer reasonably expects to be so admitted and is associated in that preparation with a lawyer admitted to practice in this jurisdiction; or

(2) the lawyer is an in-house counsel and complies with R. 1:27-2; or

(3) under any of the following circumstances:

(i) the lawyer engages in the 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;

- (ii) the lawyer engages in representation of a party to a dispute by participating in arbitration, mediation or other alternate or complementary dispute resolution program and 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 pro hac vice admission pursuant to R. 1:21-2 is required;
  - (iii) the lawyer investigates, engages in discovery, interviews witnesses or deposes witnesses in this jurisdiction for a proceeding pending or anticipated to be instituted in a jurisdiction in which the lawyer is admitted to practice;
  - (iv) the out-of-state lawyer's practice in this jurisdiction is occasional and the lawyer associates in the matter with, and designates and discloses to all parties in interest, a lawyer admitted to the Bar of this State who shall be held responsible for the conduct of the out-of-State lawyer in the matter; or
  - (v) the lawyer practices under circumstances other than (i) through (iv) above, 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.
- (c) A lawyer admitted to practice in another jurisdiction who acts in this jurisdiction pursuant to paragraph (b) above shall:
- (1) be licensed and in good standing in all jurisdictions of admission and not be the subject of any pending disciplinary proceedings, nor a current or pending license suspension or disbarment;
  - (2) be subject to the Rules of Professional Conduct and the disciplinary authority of the Supreme Court of this jurisdiction;
  - (3) consent in writing on a form approved by the Supreme Court to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against the lawyer or the lawyer's firm that may arise out of the lawyer's participation in legal matters in this jurisdiction, except that a lawyer who acts in this jurisdiction pursuant to subparagraph (b)(3)(ii) or (b)(3)(iii) above shall be deemed to have consented to such appointment without completing the form;
  - (4) not hold himself or herself out as being admitted to practice in this jurisdiction;
  - (5) comply with R. 1:21-1(a)(1); and
  - (6) except for a lawyer who acts in this jurisdiction pursuant to subparagraph (b)(3)(ii) or (b)(3)(iii) above, annually register with the New Jersey Lawyers' Fund for Client Protection and comply with R. 1:20-1(b) and (c), R. 1:28-2, and R. 1:28B-1(e) during the period of practice.

Keep in mind that regardless of where unethical conduct or unauthorized legal practice occurs, a lawyer licensed in New Jersey is subject discipline in New Jersey. See NJ RPC 8.5

**RPC 8.5 Disciplinary Authority; Choice of Law**

- (a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction regardless of where the



lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is subject also to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.