



ISBA Professional Conduct Advisory Opinion

Opinion No. 20-01
May 2020

Subject: Law Firms; Nonlawyer Assistants (Law School Graduates)

Digest: An employing lawyer or law firm may allow a law school graduate awaiting the bar exam or admission to the bar to perform many of the services normally performed by licensed first year associates, other than appearing in a legal proceeding, provided that the graduate's work is reviewed by a supervising lawyer who takes responsibility for the work product and that the graduate and employing lawyer or law firm do not make false or misleading statements to clients or others regarding the graduate's status at the firm.

References: Illinois Rules of Professional Conduct, 5.1, 5.3, 5.5, 8.4(a)
Ill. S. Ct. R. 711¹
ISBA Advisory Opinion 87-1
ISBA Advisory Opinion 03-07
Iowa Bar Association Ethics Opinion 94-26 (Feb. 1995)
Pennsylvania Bar Association Ethics Opinion 86-97 (May 1987)
South Carolina Bar Association Ethics Opinion 90-25 (Oct. 1990)

FACTS

A law firm has hired a law school graduate with the expectation that the law school graduate will sit for the bar and upon admission to the Illinois bar, will join the firm as a new associate. The law school graduate's ability to sit for the bar exam and/or admission to the bar will be delayed due to the COVID-19 virus. The law firm would like to give the graduate work, under the supervision of a partner in the firm, that the firm would ordinarily give a first year associate, although the law firm recognizes the graduate could not represent a client in a legal proceeding before a court or adjudicatory body or otherwise engage in the actual practice of law.

QUESTIONS PRESENTED

¹ As of this writing, a law school graduate's eligibility to perform certain legal services under a lawyer's supervision pursuant to Ill. S. Ct. R. 711 remained limited to work performed with a legal aid bureau, legal assistance program, organization or clinic . . . , the office of the Public Defender, or a law office of the State or any of its subdivisions, and did not extend to work performed by law school graduates employed in the private sector.

May the law firm give the law school graduate the work the law firm would ordinarily give to a first-year associate if the graduate is supervised by a licensed lawyer in the firm?

OPINION

The Committee recognizes that graduating law students face uncertain and additional challenges given the COVID-19 virus. At the time of the writing of this opinion, the Illinois Supreme Court just announced the July 2020 bar exam will be rescheduled to September 2020. Moreover, law school graduates may be unable to sit for the rescheduled bar due to illness by the graduate or by a family member or other matters of health and safety. While acknowledging the unusual circumstances the profession faces, lawyers and law firms remain responsible for adherence to their ethical duties during these difficult times.

Law school graduates who have not yet been admitted to the bar are not licensed to practice law and therefore may not engage in the practice of law. Law school graduates are generally prohibited from representing a client in a legal proceeding or appearing in court, including in depositions. *Cf.*, Supreme Court Rule 711. *See, e.g.*, Pennsylvania Bar Association Ethics Opinion 86-97 (May 1987). Lawyers and law firms cannot assist law school graduates in the unauthorized practice of law. *See*, Rule 5.5 (a).

However, Comment 2 to Rule 5.5 notes that the Rule “does not prohibit a lawyer from employing the services of para-professionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work.” Law school graduates would fall within the definition of para-professional.

Rule 5.3 also provides that lawyers may employ nonlawyer assistants in their practice. Again, law school graduates who are not yet licensed would fall within the category of nonlawyer assistants. Similar to the obligations of supervisory lawyers supervising subordinate lawyers pursuant to Rule 5.1, supervising lawyers of nonlawyer assistants must make reasonable efforts to ensure that the nonlawyer assistant’s conduct is compatible with the professional obligations of the lawyer. *See*, Rule 5.3 (Responsibilities Regarding Nonlawyer Assistance). *See also*, ISBA Advisory Opinion 03-07.

Accordingly, we believe law school graduates may undertake many activities, under the supervision of a licensed lawyer, that do not run afoul of the Rules of Professional Conduct. Indeed, many of the normal activities of first year associates in a law firm consist of activities that nonlawyers also routinely perform. For example, law school graduates may conduct legal and factual research, offer legal conclusions under the supervision of a lawyer, interview witnesses and clients, and prepare legal documents and pleadings for a lawyer’s signature. (This is not intended as an exhaustive list of the permissible activities of a law school graduate, but any other activities must not run afoul of the prohibition against the unlawful practice of law by a non-lawyer.) Law school graduates act for the lawyer in the rendition of the legal services. The licensed supervisory lawyer must undertake adequate supervision. The licensed supervisory lawyer is responsible for the work product.

Finally, the lawyers or law firms should take adequate steps to ensure that any communications about the status of the law school graduate are not false or misleading. The law school graduate and the law firm must not identify or hold out the graduate as a licensed lawyer and the graduate must not sign documents as a lawyer. Any inclusion of the law school graduate on the firm letterhead should not be misleading. *See*, ISBA Advisory Opinion, 87-1 (names of lay employees may be included on firm letterhead provided the letterhead is not misleading).

Our opinion is consistent with the opinions of other jurisdictions that have considered this issue. In Opinion 86-97 (May 1987), the Pennsylvania Bar Association concluded that graduate law students could perform the following activities under supervision of a lawyer: (1) preparation of pleadings, written discovery requests and responses, and other documents; (2) preparation of any document normally prepared in a legal practice; (3) legal research, including preparation of written memorandum of conclusions; (4) information-gathering interviews with clients or witnesses in connection with any legal matter; (5) routine filing of completely executed legal documents; and (6) general clerical duties. *See also*, Iowa Bar Assoc. Opinion 94-26 (Feb. 1995)(A lawyer may hire a law school graduate who has not yet passed the bar exam as a law clerk, subject to the limitations on employment of nonlawyers generally).

In Opinion 90-25, the South Carolina Bar considered whether a law student graduate could sign correspondence for a law firm and concluded that the graduate could do so as long as the graduate's status was clear in the correspondence and the graduate was properly supervised, stating, "The law school graduate should be able to sign letters having to do with matters for which he is qualified, if he is properly supervised by one of the firm's attorneys. The supervisory lawyer, however, would be accepting full responsibility."

CONCLUSION

With the supervision of a licensed supervisory lawyer, a law school graduate awaiting the bar exam or admission to the bar may perform many of the services normally performed by licensed first year associates, provided that the law school graduate and the law firm do not provide any false or misleading statements about the law school graduate's status.

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