

# ADVISORY ETHICS OPINION 80-10

## SYNOPSIS:

Attorney not admitted to Vermont Bar, engaged by a Vermont attorney during period of fulfilling clerkship requirement for admission to the Vermont Bar under the supervision of the Vermont attorney, should be treated as a law clerk unadmitted to practice in the State of Vermont, with the Vermont attorney bearing full responsibility for work he performs for clients of the office. Fees generated by his efforts as attorney-clerk, or for client-generation, should be treated as any other income to the firm, but the attorney-clerk's salary may properly reflect his value to the firm in these respects.

## QUESTION PRESENTED:

A Vermont attorney with an established office wishes to hire or associate with an attorney not admitted to practice in Vermont. The out-of-state attorney is applying for admission to the Vermont Bar, will perform his clerkship while engaged by the firm, and will take the bar examination in July 1981. It is anticipated that the attorney-clerk will be asked to do work both for clients from the jurisdiction in which he is admitted to practice and for the established attorney's Vermont clients.

- A. What are the ethical parameters of the practice in which the attorney-clerk may engage while associated with the Vermont office?
- B. May the fee for services performed by the Vermont office, but which are generated as a result of the attorney-clerk's out-of-state contacts, properly be shared or divided between the resident attorney and the attorney-clerk?

## OPINION:

- A. Under Rule 79.1(e) of the procedural rules governing practice before Superior and District courts, non-resident attorneys may appear and be heard if associated with a resident attorney. See also, 7 CJS Attorney and Client §26(a).  
As to out-of-court practice, two sub-issues surface. One is whether the attorney-client clerk may continue to render legal opinions to clients from the jurisdiction in which he is admitted to practice on questions of the law in that jurisdiction. We would assume that the answer to this question may be governed by the attorney's licensing statute applicable to that jurisdiction. Second, is whether the attorney-clerk can "practice law" in the sense of being directly engaged by Vermont clients to perform legal services for them; the answer has to be that he may not. Whether a specific area of activity would constitute the "practice of law" is another question and applicant should have reference to the published literature on 7 CJS Attorney and Client §32 and 7 AmJur2d Attorneys at Law §§73 et seq.; Batchelder v. Mantak, 136 Vt. 456, (1978); In Re Welch, 123 Vt. 80 (1962); In Re Pilini, 122 Vt. 385 (1961); In Re Flint, 110 Vt. 38 (1938); In Re Ripley v. Hill, 133 Vt. 599 (1975) for the useful distinction it makes between unauthorized practice of law and a non-resident attorney being involved in a transaction on his own behalf. Ultimately, to practice law in Vermont the attorney-clerk must satisfy all the requirements of the Rules of Admission set forth in 12 V.S.A. App I before he can do those things and perform those services which constitute the practice of law. Consequently, any undertaking by the Vermont law office to perform out-of-court legal services in Vermont which are properly characterized as "the practice of law" must be accomplished in the same manner as if the attorney-clerk were any other law clerk unadmitted to practice in the state, i.e., by the client's engaging the services of the established attorney, who should bear full responsibility for the performance of the attorney-clerk.
- B. Under DR 3-102, and having in mind that until the attorney-clerk is admitted to practice in Vermont he might properly be considered a non-lawyer with respect to services rendered in Vermont and fees generated thereby, the Committee believes that it would be inadvisable to engage in a direct fee-sharing arrangement with the attorney-clerk. Accordingly, since the attorney-clerk will be, for all intents and purposes, a law clerk with respect to his services in the office, he should be treated as any other salaried employee insofar as fees generated by his efforts as clerk are concerned. In the Committee's opinion, this should not unduly restrict the ability of the established attorney to compensate the attorney-clerk for the reasonable value to the firm of his services as clerk.