

## **ADVISORY OPINION NO. 2013-2**

### **SYNOPSIS**

A Vermont licensed attorney may represent residents of Vermont and other states in administrative proceedings before the Social Security Administration Office of Disability Adjudication and Review as may an attorney not licensed in Vermont represent Vermont residents in such proceedings.

### **QUESTIONS PRESENTED**

1. May an attorney who is not licensed to practice in Vermont represent Vermont residents in administrative hearings before the Social Security Administration's Office of Disability Adjudication and Review (ODAR)?
2. May an attorney who is licensed to practice in Vermont represent residents of other states in administrative hearings before the Social Security Administration's Office of Disability Adjudication and Review?

### **FACTS**

A Vermont attorney describes the process of representing claimants for Social Security and Supplemental Security Income benefits who seek reviews by an Administrative Law Judge (ALJ) of claims that have been denied on initial application and review.

We rely upon the requesting attorney's representation that federal law permits both attorneys and paralegals to act as claimants' representatives in these proceedings. For claimants who live in Vermont, the hearings are conducted out of the ODAR office in Manchester, New Hampshire; and most hearings are conducted by a video conference with the ALJ in a hearing room at the ODAR office in New Hampshire and the Vermont claimants at video conference sites in Vermont.

The requesting attorney is concerned that paralegals may represent claimants in different states because they are permitted under federal law to do so and do not need to meet the licensing and admission standards that apply to attorneys; and suggests that attorneys may only represent claimants in states where they are either licensed or otherwise permitted to represent claimants because of the practice rules of those states.

### **RELEVANT RULES OF PROFESSIONAL CONDUCT**

RULE 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

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(d) A lawyer admitted in another United States Jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

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(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

Comment [18]: Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.

## **DISCUSSION**

Given the facts presented to us, the Committee concludes that a lawyer who is not licensed in Vermont may nevertheless provide representation throughout the administrative process to social security claimants who reside in Vermont, consistent with Rule 5.5(d)(2), because it is consistent with governing federal law.

Likewise, a Vermont lawyer may represent non-Vermont residents in such matters.

Therefore, the answer to both questions presented is “Yes.” We underscore that the answers here are compelled by controlling federal law and not the Vermont Rules of Professional Conduct, which do not control admissions before federal courts and agencies.