

**ATTORNEY CLIENT PRIVILEGED COMMUNICATION  
MEMORANDUM**

TO: Alan Phillips

CC: File

FROM: [REDACTED]

DATE: November 8, 2017

RE: Unauthorized Practice of Law

SUBJECT: Opinion memorandum concerning the UPL implications of Alan Phillips' law practice

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You have asked that I provide an analysis of any unauthorized practice of law (UPL) exposure of your current law practice. You have provided a detailed description of your practice. As you are a North Carolina licensed attorney, my analysis is limited to interpretation of the NC rules and regulations and possible exposure you may have generally given the nature of your practice, your contacts with potential clients in other jurisdictions, and how you hold yourself out to others in other jurisdictions.

You have indicated that you assist or represent persons in numerous jurisdictions. The Rules of Professional Conduct and the statutes governing UPL vary at least somewhat in most every state. Consequently, we are not attempting in this memo to analyze all the various states' rules and statutes. Rather, we will analyze your practice under the North Carolina UPL rules (Rule 5.5) and statutes (Chapter 84) as an illustrative example. We could later analyze your practice's potential exposure to a Rule 5.5(a) violation, based upon your representation of a citizen of another specific state, upon request.

I am limiting my review of information to (1) the practice narrative you provided dated November 1, 2017, entitled General Practice Summary, (2) review or knowledge of the North Carolina Rules of Professional Conduct, (3) review or knowledge of the UPL statutes in Chapter 84 of the N.C. General Statutes; (4) assorted UPL practice materials from the State Bar, and (5) knowledge of past decisions by the Grievance Committee and Authorized Practice committees. I am also drawing upon my experience as former Assistant Ethics Counsel with the State Bar. I am specifically not relying upon any past

disciplinary decision against you, as I understand from our discussions that the facts upon which that decision is based are inaccurate or flawed.

Finally, this opinion can only apprise you of the risks and provide advice that will help minimize the risk of UPL, and hopefully lessen the risk of UPL allegations against you. UPL laws are invariably changing and interpretation of those rules changes as well. There is no advice that will provide absolute protection against allegations or findings of possible UPL in other jurisdictions. I can only provide advice that may help minimize your risk.

### **Brief Restatement of Facts**

Your practice is focused solely on [REDACTED], and the various contexts in which [REDACTED]. You have developed an expertise in this area, and are sought out by attorneys and persons throughout the country with assistance on these matters. Most of your clients' issues involve federal law, but some state law issues do arise. In such situations, you begin with a discussion with the client's local counsel. Even when advising clients about federal law, should a state law question come up, you refer the client to another source, such as local counsel, their local health department, or a law school library. You do not provide any advice or assistance directly with issues of state law outside of North Carolina.

### **Executive Summary**

Based upon your practice description, you are very cognizant of the UPL issues, and you do not advise individuals on state law matters in other jurisdictions. Nonetheless, I believe there is a risk that your practice has the appearance of crossing state lines, and would advise you to take some additional steps. First, I would advise making sure your website clearly includes your jurisdictional limitations, and your location in NC. You also want to add disclaimer language indicating that your practice is confined exclusively to federal law issues and North Carolina state law and, to the extent that legal issues arise involving other jurisdictions, you associate local counsel.

Second, you must have your jurisdictional limitations on any written communications with clients, whether it is email, fax, or letters, because of your frequent contacts with persons from other states. Your email communications should include language such as, "Licensed only in NC. My practice is confined exclusively to federal law issues and North Carolina state law." It may be prudent to include this language on your letterhead as well.

Finally, because you do not practice in an area of the law that is "exclusively federal" (as defined in NC), such as federal immigration or social security disability, you must be careful not to establish, or appear to establish, a systematic or continuous presence or practice in another state. In North Carolina, there is an exception for an out-of-state lawyer to represent NC citizens or to physically practice in North Carolina, if the practice is exclusively federal. But no exception is permitted where an out-of-state lawyer represents NC citizens in other traditionally federal practices such as bankruptcy, tax, or intellectual property law matters, for example, because these areas of law frequently require the

application and interpretation of North Carolina law. Applying a similar reasoning, there is possible exposure in the following circumstances: (i) if you frequently are representing clients from another particular jurisdiction, (ii) if your website suggests frequent past representation in a particular jurisdiction, (iii) if you claim you have a national practice without sufficient disclaimer language, or (iv) if you suggest in any communications that you can represent persons in a particular jurisdiction without an appropriate disclaimer. This latter situation may arise when corresponding with opposing counsel on behalf of an out-of-state client, even if this issue relates only to a federal matter.

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