Unauthorized of Authorized Practice of Law by Transactional Out-of-State Lawyers in Delaware?

T wo recent decisions of the Chancery Court, Sample v. Morgan, 935 A.2d 1046, 1047 (Del. Ch. 2007), and the Delaware Supreme Court, In the Matter of Valerie Glover Tonwe, 929 A.2d 774 (Del. 2007), though they address two distinct areas of the law, are cases of first impression related to the Delaware Supreme Court’s broadening of the ability to practice Delaware law by non-Delaware lawyers while holding those who practice Delaware law accountable in Delaware. The Sample decision has been the subject of speculation by at least one commentator that the Chancery Court is at least, in part, complicit in protecting a monopoly on the practice of Delaware law.

I’ll take the vice chancellor at his word that this is a relatively rare case driven by the law and facts. And, to be sure, Delaware protects interests in the integrity of its law by extending its sanctions beyond the lawyers within its borders. That’s particularly important in this post-Enron era of threats to financial markets. But I can’t avoid a sneaking suspicion that this may also be in line with Delawarecliante that with Delaware’s protecting its lawyers’ franchise and not just its reputation.

A review of the court’s revisions to the Delaware Rules of Professional Responsibility (Rule(s)), following revisions to the American Bar Association’s (ABA) Model Rules of Professional Conduct, demonstrates that Delaware’s tradition of multijurisdictional practice will persist. The Sample decision demonstrates that the Sample decision is directly related to the broadening of the broadening of the ability to practice Delaware law and the adjudicating their practice.

This article does not attempt to provide a complete analysis of the boundaries of multijurisdictional practice of Delaware law. It does argue that Delaware lawyers practice Delaware law and that Delaware bar associations are misguided when an analysis is done of the broadening of the broadening of the ability to practice Delaware law and the adjudicating their practice.

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Regulation of Multijurisdictional Practice and Civil Liability

Sample v. Morgan, 935 A.2d 1046, 1047 (Del. Ch. 2007), found that non-Delaware lawyers and their firms could be sued in Delaware “as to claims arising out of their actions in providing advice and services to Delaware public corporation, its directors, and its managers regarding matters of Delaware corporate law.” In addition to noting three instances in which Tonwe was physically present in Delaware, the court noted that “Tonwe’s practice of Delaware law did not establish ‘reputation’” and held that Delaware courts, she established a “pattern of representation of Delaware clients which constituted the practice of law ‘in Delaware’ for the purposes of Rule 8.5(a).” For the purposes of Rule 8.5(a), the court recorded the content of several blog postings can be found at the Delaware’s reciprocal discipline rule, distinct from Rule 8.5(a).

Civil Liability

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Reciprocal Jurisdiction

Rule 8.5(a) allows for jurisdiction in disciplinary actions even where the lawyer is not admitted in the state, where the lawyer has provided or offered to provide legal services in the state, and when it is found that the lawyer has provided or offered to provide legal services in the state. Rule 8.5(a) provides that in addition to the personal jurisdiction in Delaware, the lawyer’s practice is subject to the discipline of the Delaware Supreme Court. Recent action by the Disciplinary Board of the Delaware Supreme Court confirms that the unauthorized practice of law by non-Delaware lawyers is subject to the jurisdiction of the Delaware Supreme Court. Recent action by the Disciplinary Board of the Delaware Supreme Court confirms that the unauthorized practice of law by non-Delaware lawyers is subject to the jurisdiction of the Delaware Supreme Court. Recent action by the Disciplinary Board of the Delaware Supreme Court confirms that the unauthorized practice of law by non-Delaware lawyers is subject to the jurisdiction of the Delaware Supreme Court. Recent action by the Disciplinary Board of the Delaware Supreme Court confirms that the unauthorized practice of law by non-Delaware lawyers is subject to the jurisdiction of the Delaware Supreme Court.
"Unauthorized Practice of Law; Multijurisdictional Practice of Law" by Charles B. MacGruder

The Delaware Supreme Court has jurisdiction over the Delaware law firm of Sample, which has significant connections to another Delaware jurisdiction. In re Tower Air Inc.

The American Bankruptcy Institute is a multi-disciplinary, nonpartisan organization devoted to bankruptcy issues. ABI has published an entire book on "Insolvency Law and Practice" and a great deal of other material on all facets of the insolvency field. For more information, visit ABI World at www.abiworld.org.