

*Supersedes Opinion dated September 14, 1992
Approved by the Supreme Court of Virginia
September 18, 1996*

UPL Opinion No. 158.

Foreign Attorneys

You have indicated that an attorney licensed in a foreign jurisdiction but not in Virginia is a member of a firm which has an office in that foreign jurisdiction but not in Virginia. The attorney and his firm have undertaken to represent a company which is incorporated in Virginia and has offices only in Virginia.¹ The scope of the representation includes “all reasonably necessary and appropriate legal services pertaining to the representation of (the company) and its interests with respect to such matters as (the company) may from time-to-time request representation.” You further indicate that the actual services provided by the attorney and his firm have included such matters as advising on questions of federal and state securities law; interpretation of corporate documents including the corporation’s shareholders’ agreement governing the transfer of corporate stock by sale or gift; and representation of the corporation’s interests in matters involving conflicts, claims and grievances between the corporation and other parties including shareholders. Finally, you indicate that in at least some instances, the attorney was physically present in Virginia at the time the advice and practice was rendered, including but not limited to appearances at annual and special meetings of the corporation’s shareholders held in Virginia, during which meetings the attorney shared the platform with corporate officers, was introduced as corporate counsel and presented responses to legal questions raised by attendees.

You have asked the Committee to opine whether the foregoing facts constitute the unauthorized practice of law in Virginia and, furthermore, whether the answer would be different in consideration of the additional fact that the attorney is also an officer of the corporation. Finally, you have inquired as to whether the answer would be different if another attorney associated with the firm were licensed to practice in Virginia but did not personally perform the services indicated.

The Committee considered your inquiry a number of times and directed me to transmit its conclusions to you which were included in my letter of September 14, 1992. Subsequent to that date, at the request of the Virginia State Bar Council, the Opinion was reconsidered the Committee’s February 3, 1994 meeting and the Committee has again directed me to transmit its conclusions to you.

In response to your inquiry, the Committee is of the opinion that a foreign attorney may advise a Virginia client in Virginia on matters regarding litigation which is pending in a jurisdiction in which the foreign attorney has been admitted to practice law, so long as the attorney remains in good standing in that jurisdiction and is competent to provide such advice, and so long as the matter does not involve issues of Virginia law. Furthermore, the Committee is of the opinion that the foreign

1. It is the Committee’s understanding that neither the attorney nor his firm is in-house counsel to the corporation.

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attorney who meets those criteria may also prepare legal documents relative to the matter on which he is advising the Virginia client. However, the foreign attorney may continue to provide such advice only until Virginia legal issues arise in the matter.

The Committee further opines that a foreign attorney, although admitted to and in good standing in the bar of his home jurisdiction, may not advise or prepare legal documents for a Virginia client in Virginia on matters involving Virginia law.

As to matters involving federal law, the Committee is of the opinion that a foreign attorney may advise and prepare legal documents for a Virginia client in Virginia on such matters, assuming that the foreign attorney is admitted to practice before a federal court. Such advice and document preparation may be provided only to the extent that the federal matter is not impacted by state law and if state law issues are not involved.

Furthermore, the Committee believes that it would constitute the unauthorized practice of law for a foreign attorney to advise any client in Virginia on matters that involve law which is neither federal law nor the law of a jurisdiction in which the foreign attorney is authorized to practice law.

The Committee is of the view that determinations as to specific requirements governing an attorney's appearances before tribunals remain the province of the tribunal in question. See also Rule 1A:4 of the Rules of the Supreme Court of Virginia; Va. Code Ann. §16.1-88.03; UPL Op. 102.

It is the Committee's opinion that its conclusions would not be altered by either the fact that the foreign attorney also serves as an officer of the corporation, except as permitted by statute or under the attorney's status as in-house counsel, or the fact that another attorney associated with the firm is licensed to practice in Virginia but does not personally perform the services indicated.

Finally, the Committee notes that this Opinion does not address any appearances of a foreign attorney before agencies or courts which permit a non-lawyer to appear in a representative capacity. *See* Part Six: Section I: UPR-9 regarding Administrative Agency Practice.

To the extent that this Opinion is in conflict with the conclusions reached in prior UPL Opinions 100 and 107, those Opinions are hereby vacated.