

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1353

Amending Alaska Rule of
Professional Conduct 8.5
concerning jurisdiction.

IT IS ORDERED:

Alaska Rule of Professional Conduct 8.5 is amended to read:

Rule 8.5. Disciplinary Jurisdiction.

A lawyer person admitted to practice in this jurisdiction Alaska is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere state, regardless of where the conduct occurs, and even though the person may be subject to the disciplinary authority of another jurisdiction for the same conduct. A person who, although not admitted to practice law in this jurisdiction Alaska, engages in the is permitted to practice of law pursuant to court rule or order is subject to the disciplinary authority of this jurisdiction state to the same extent as if the person were admitted to practice in Alaska.

ALASKA COMMENT

The second sentence of Alaska's Rule 8.5 was added in order to cover the situation where an attorney admitted in another state is practicing in this state pursuant, for example, to Civil Rule 81 or Bar Rules 43, 43.1, and 44, or where a non-attorney has been allowed by special order of the court to engage in the practice of law before that court.

Alaska's Rule 8.5 was revised in 1999 to eliminate some of the references to "jurisdiction" that appeared in the original version of the Alaska rule. The word "jurisdiction" is ambiguous: it can refer either to a legal entity (such as a state or federal government) or to an entity's legal authority to perform an action. Because of this ambiguity, and because Rule 8.5 must refer to both of these concepts, Alaska's Rule 8.5 now uses the word "jurisdiction" to mean another government, and it uses the phrase "disciplinary authority" to mean "disciplinary jurisdiction" - the legal authority to investigate disciplinary matters and to commence disciplinary proceedings.

The 1999 revision of Alaska's Rule 8.5 was also intended to clarify that, regardless of where a person may commit professional misconduct, Alaska has the authority to pursue disciplinary proceedings against that person for the misconduct if the person is admitted to practice law in Alaska or if the person is engaged in the practice of law in Alaska under a court rule (for example, legal interns) or a court order (attorneys appearing pro hac vice).

Rule 8.5 speaks only to Alaska's legal authority to pursue disciplinary proceedings. The rule does not address the question of whether the Alaska Rules of Professional Conduct should govern any assessment of the

attorney's conduct. Difficult choice-of-law problems can arise when an attorney engages in the practice of law in two or more jurisdictions. For instance, an Alaska attorney who is appearing pro hac vice in another state might engage in conduct in that other state which is perfectly legal under that state's code of professional conduct, but which violates the Alaska Rules of Professional Conduct.

In 1993, the American Bar Association amended its Model Rule 8.5 to codify specific rules to govern these conflict-of-law situations. See ABA Model Rule 8.5(b). However, the ABA's proposed conflict-of-law rules have drawn significant criticism, and these proposed rules still fail to answer some of the more difficult problems in this area.

Alaska's Rule 8.5 does not address these choice-of-law problems. The rule only defines the authority of the Alaska Bar Association and (ultimately) the Alaska Supreme Court to investigate and pursue disciplinary matters. The rule does not answer the question of whether the propriety of a person's conduct should be assessed under the Alaska Rules of Professional Conduct or under the rules of some other jurisdiction. Such questions must be answered either by future codification or through a case-by-case, common-law process.

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COMMENT

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DATED: February 18, 1999

EFFECTIVE DATE: October 15, 1999

/s/
Chief Justice Matthews

/s/
Justice Eastaugh

/s/
Justice Fabe

/s/
Justice Bryner

/s/
Justice Carpeneti