

Considerations of the Unauthorized Practice of Law in the ADR Process

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Businesses have increased their use of arbitration provisions leading to an ever-increasing number of claims ultimately resolved through arbitration. This increase is due in large part to the relative speed and costs savings of arbitration when compared to traditional litigation. As always, changes from traditional to modern paradigms bring with them new considerations. ADR is no different. One of the major considerations centers on just who can advocate on behalf of the parties. There is a

question as to whether parties seeking to arbitrate their civil dispute will need legal counsel to present their case in an arbitration forum properly.

This article will address the unauthorized practice of law in arbitrations. The statutes and case law related to the unauthorized practice of law are designed to answer the question of who can advocate on behalf of the parties in arbitration. Specifically, the cases and statutes set the boundaries with respect to whether one must in fact be a lawyer to represent parties or whether lawyers can cross state lines and represent parties in states in which the lawyer is not a member of that state's bar.

We will explore and address the following issues as they relate to the unauthorized practice of law in arbitration proceedings: can a nonlawyer represent a party in an arbitration, can an in-house lawyer, who is not licensed in the state where the arbitration is taking place, represent her company in an arbitration, and can an out-of-state lawyer represent a party in an arbitration action pending in a state in which the lawyer is not licensed to practice law. Though the questions hold differing implications, each requires that counsel for the parties evaluate the guiding law in their respective jurisdiction.

These issues have achieved elevated status since it is commonplace for law firms to have national practices and multiple offices. As ADR becomes more mainstream, concerns may arise about the potential impact on party

representation during the arbitration process. For example, if an arbitration is pending in Pennsylvania, where the law firm has a Pennsylvania office, but they assign the matter to a partner with subject matter expertise in the law firm's Texas office, can the Texas lawyer (who is not licensed in Pennsylvania) handle the arbitration in Pennsylvania without engaging in the unauthorized practice of law? In some jurisdictions, this issue is resolved by simply having local counsel present at the proceedings, and in some instances a formal motion for pro hac vice admission may be required. [READ MORE...](#)

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