

NEW HAMPSHIRE BAR ASSOCIATION
Ethics Committee Formal Opinion #1988-89/18
Legal Intern Appearance Before State Appeals Board
March 9, 1989

RULE REFERENCES:

- *Rule 5.3
- *Rule 5.5

SUPREME COURT RULES REFERENCES:

- *Rule 35
- *Rule 35 (Rule 2)

SUBJECTS:

- *Attorney-Client Relationship
- *Competence
- *Disqualification
- *Employees of Lawyers
- *Law Firms
- *Paralegals
- *Unauthorized Practice of Law

ANNOTATION:

A lawyer may permit a legal assistant to represent a client in administrative proceedings, if authorized by statute, court rule or decision, administrative rule, or regulation or customary practice. (Rule 5.5; Supreme Court Rule 35(Rule 2)).

A lawyer shall have a nonlawyer assistant act consistently with the Rules of Professional Conduct. A lawyer is responsible for a nonlawyer assistant's conduct. (Rule 5.3).

I. QUESTION:

May the State Employees Association (SEA) legal intern present cases before the New Hampshire Personnel Appeals Board (Board)?

II. RESPONSE:

SEA field representatives (non-attorneys) and various non-attorneys from state agencies have for years presented cases before the Board without question. The SEA legal intern, a law student under the direction of the SEA general counsel, has in the past practiced before the Board without question. However, a former chairman of the Board raised the question as to whether the legal intern presenting cases before the Board was engaging in the unauthorized practice of law.

New Hampshire treats representation before a state administration agency as the practice of law, *see Sup. Ct. R. 35, Rule 2*. Therefore the question is, is representation by a legal intern before the Board authorized?

States vary as to whether and under what circumstances lay representation before state agencies is permitted and as to which branch of government has the power to grant such permission.

In New Hampshire the Supreme Court has ruled on the question in Sup. Ct. R. 35, Rule 2 which states:

"A lawyer may not permit a legal assistant to represent a client in judicial or administrative proceedings or to perform other functions ordinarily limited to lawyers, unless authorized by statute, court rule or decision, administrative rule or regulation or customary practice."

Board Rule Per-A 202.06 states:

- (a) Any party may appear without representation.
- (b) Any party may be represented by any person of good character, including an attorney.
- (c) If one party has such a representative, such representative shall notify the Board and the other party of such representation in writing at least five (5) working days before the date of the hearing. The late filing of appearances may be allowed, upon motion, by the Board for good cause shown.
- (d) The Board may exclude a representative for failure to file an appearance or for disruptive, disrespectful or otherwise improper conduct at a hearing.

The Board may also refuse to allow the participation of a representative for a party if the representative fails to comply with the communication, filing and service requirements of Per-A 206. See Per-A 206.03(b). The Board has no other basis than these for denying representation under its rules.

Board Rule Per-A 202.06(b) and the customary practice of the Board clearly authorize lay representation before the Board. Therefore, under Sup. Ct. R. 35, Rule 2 the answer to the question is yes, SEA legal interns may present cases before the Board. Furthermore, the general counsel is not in violation of Rule 5.5 of the Rules of Professional Conduct.

One caveat, since the legal intern is under the direction of the SEA general counsel, Rule 5.3 of the Rules of Professional Conduct and Supreme Court Rule 35 should be reviewed by the general counsel.

III. SUMMARY:

SEA legal interns may present cases before the New Hampshire Appeals Board, however the supervising attorney is subject to Rule 5.3 of the Rules of Professional Conduct and to Supreme Court Rule 35.