



News & Trending

PUBLICATIONS & ALERTS

FEDERAL COURT UPHOLDS RULES PROHIBITING THE PRACTICE OF LAW BY CORPORATIONS – REJECTING ATTEMPT BY TRADE ASSOCIATION TO REPRESENT ITS MEMBERS

06.05.2019

By Edward Roche

On April 19, the U.S. Court of Appeals for the Fourth Circuit **rejected a trade association's constitutional challenge** to the North Carolina rules that prevent corporations from providing legal advice.

North Carolina's rules on the unauthorized practice of law ("UPL") strictly limit the types of entities that may practice law. Professional corporations owned exclusively by lawyers may practice law. So too may nonprofit corporations functioning as public interest law firms. Otherwise, corporations may not offer legal advice. Though in-house lawyers may advise their corporations, they may not provide legal advice to those outside the corporation.

The Fourth Circuit's decision in *Capital Associated Industries, Inc. v. Stein* concludes for now the battle—fought in both the legislature and the courts—over whether North Carolina's general prohibition bars a trade association (i.e., a corporation) from giving legal advice to its members. Capital Associated Industries wanted to increase its membership revenue by adding legal advice to its repertoire of member services, such as answering members' questions and drafting documents. The court's decision means that members of a trade association will need to obtain legal counsel in the traditional manner, i.e., through outside law firms, and cannot obtain counsel from an in-house lawyer for the trade association as a member service.

The Fourth Circuit's decision indicates that North Carolina's restriction on legal advice by corporations is likely to remain in place for the foreseeable future, for at least two reasons.

First, neither North Carolina's General Assembly nor its State Bar seems inclined to depart from the prohibition. The legislature failed to pass bills introduced in 2011 and 2013 that would have allowed licensed attorneys employed by trade associations or business leagues to advise their members. The State Bar, which intervened as a defendant in *Capital Associated Industries* to defend the state's UPL rules, outlined the state's concerns about conflicts of interest that may exist within corporations. Essentially, the interests of non-lawyer directors and officers may diverge from the interests of the clients receiving the legal advice. For example, a client may wish to take a course of action that would hurt the corporation's interests, or a client may reveal confidential information that the corporation would benefit from knowing. The attorney would have ethical duties to the client, including the duties of loyalty and confidentiality. Non-lawyers managing the corporation—who would not themselves be bound by the same ethical obligations—may prefer that their attorney employee act in the best interests of the corporation rather than the client.

The second reason for the likely continuance of the broad ban on corporate legal practice is that federal courts continue to grant state regulators considerable leeway in defining who may offer legal services. The court in *Capital Associated Industries* rejected a variety of challenges, based on the state and federal constitutions, to the UPL statutes. States may set their rules differently; for example, a handful of states allow trade associations to offer legal advice. In general, however, state licensing rules need only be reasonable to survive legal challenge. The court found North Carolina's UPL rules satisfied that standard.

UPL rules, however, have changed in the past and may change further with evolving standards in the economy. In a **2015 settlement** of long-running litigation against LegalZoom—and in a 2016 amendment to the state's UPL statutes—North Carolina recognized that a corporation does not "practice law" in the state when it offers online custom document preparation services. But the state rarely grants concessions like this. When it does allow legal service providers to break new ground, the state will generally impose significant safeguards to ensure the public remains protected, as it did in the case of LegalZoom.

PROFESSIONALS

Michael W. Mitchell

Edward F. Roche

Christopher G. Smith

PRACTICE AREAS

Litigation

