M E M O R A N D U M

TO: File
FROM: Tom W. Bell
RE: Archimediate and the Practice of Law
DATE: May 13, 2015

Because I am considering forming Archimediate as a California, LLC, and because California disallows using that entity to practice law, the question arises whether Archimediate's services would constitute the practice of law in California. The answer is also relevant to the question of what legal obligations and privileges attach to services provided by Archimediate. This memorandum addresses those questions. It concludes that so long as Archimediate does not advise any client on California law, and so long as it does not advise any California resident on the law of any governmental organization, it probably does not practice law under applicable California law. Archimediate may also have a stronger claim to escape the restrictions of California's regulation of lawyers to the extent that it can claim that it counsels clients on the interplay of multiple bodies of law, deals solely with arbitration, consults for a licensed firm, and/or makes full disclosure to clients about the scope of its licensed authority.

California law makes the practice of law broader than court appearances.

People v. Merchants' Protective Corp., 209 P. 363, 365 (Cal. 1922): "As the term is generally understood, the practice of the law is the doing or performing services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity to the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured although such matter may or may not be depending in a court." Quoting *Eley v. Miller*, 7 Ind. App. 529, 535; 34 N.E. 836, 837 (1893).

"The definition above quoted from *People v. Merchants' Protective Corp*. has been approved and accepted in the subsequent California decisions (citations), and must be regarded as definitely establishing, for the jurisprudence of this state, the meaning of the term 'practice law." People v. Ring, 26 Cal.App.2d Supp. 768, 772l; 70 P.2d 281, 283 (1937).

California also calls it the practice of law to counsel locally on the law of a foreign country.

Bluestein v. State Bar, 13 Cal. 3d 162, 174-75 (1974):

> "Whether a person gives advice as to [local] law, Federal law, the law of a sister State, or the law of a foreign country, he is giving legal advice.... To hold otherwise would be to state that a member of the [State] Bar only practices law when he deals with local law, a manifestly anomalous statement." (In re Roel, 3 N.Y.2d 224 [165 N.Y.S.2d 31, 35; 144 N.E.2d 24] [app. dism. for want of substantial fed. question, 355 U.S. 604 (2 L.Ed.2d 524, 78 S.Ct. 535)].)

Registration as a foreign legal consultant would not help Archimediate.

Those giving legal advice in California can register as a foreign legal consultant if they are members of the Bar or its equivalent abroad.[1] Doing so allows the registered FLC to "render professional legal advice on the law of the State of California, any other state of the United States, the District of Columbia, the United States or any country other than the country in which you are admitted to practice law, whether rendered incident to preparation of legal instruments or otherwise." Registering would thus arguably not protect Archimediate, which aims to counsel clients on legal issues arising out of the use of private rule sets and international laws. More to the point, this lacuna in the exemption afforded to foreign legal consultants indicates that California does not regard consultation about the laws of a non-country or about international law as the practice of law.

The practice of law under California's applicable ethical rules does not extend to counseling about the law of a *non*-country or of *international* law.

This conclusion follows both from the definitions of the practice of law offered above and from the scope of the exemption afforded by California's rules for foreign legal consultants. Very few consultants if any address the sorts of issues of peculiar interest to Archimediate, so there no case law on point. It is difficult to see how California authorities could have any concern about consultations concerning legal issues focused on the rules of non-governmental bodies, however. Also, as discussed immediately below, California authorities have little interest in regulating consultations with out-of-state clients on matters relating to foreign law.

What if the client is out-of-state and only foreign law is at issue?

Here, too, the best authority has it that California law would not hold the advising party liable for unauthorized practice of law in California. California decisions are "clearly

[1] See http://admissions.calbar.ca.gov/Requirements/ForeignLegalConsultantsFLC/FAQ.aspx.

focused on the goal of protecting its citizens" and as show "little concern for the consequences of incompetent counsel for foreign citizens, even when California property or a California estate is involved."[2]

Other exceptions also apply.

Archimediate might also benefit from the exception sometimes applied to allow attorneys to continuing to practice when the law of many states is at issue.[3] Other exceptions include counseling solely with regard to an arbitration, consulting for a licensed firm, and/or making full disclosure to clients about the limited scope of its licensed authority.[4]

In conclusion, Archimediate would most likely fall outside the scope of California's rules pertaining to the practice of law so long as:

1) it does not advise any client (foreign or domestic) on California law, and

2) it does not advise any California resident on the law of any governmental organization (instead reserving its advice to matters of private or international law).

Archimediate might also have a stronger claim to fall outside the applicable definition of the practice of law insofar as it the issues confronting its clients of necessity involve the law of many jurisdictions (which is undoubtedly true), it counsels solely with regard to arbitration (which may sometimes be true), and it makes full disclosure to clients about the limited scope of its practices.

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[2] JEFFREY A. SCHOENBLUM, MULTISTATE AND MULTINATIONAL ESTATE PLANNING p. 5-31.

[3] Osborne M. Reynolds, *Practice and Performance by the Out-of-State Attorney-The Jealous Mistress Becomes an Interstate Traveler,* 6 *U. TOL. L. REV.* 63,68 (1974).

[4] Dianne Leigh Babb, *Take Caution When Representing Clients Across State. Lines: The Services Provided May Constitute the Unauthorized Practice of Law*, Alabama L. Rev. 535, 544-53 (1999) at http://www.law.ua.edu/pubs/lrarticles/Volume%2050/Issue%202/Babb.pdf