NEW YORK STATE BAR ASSOCIATION
ONE ELK STREET ALBANY NEW YORK 12207

Committee on Professional Ethics

Opinion #344 - 5/30/74 (21-74)

Topic: Out-of-state partners in both New York and out-of-state law firms.

Digest: Out-of-state lawyers may be partner in New York law firm and also in separate out-of-state law firms.

Code: DR 2-102(C), (D); 5-105

QUESTION

May a New York State law partnership permit an out-of-state attorney, who is not admitted to practice in New York, to be a partner if the out-of-state attorney is a partner in one or more separate out-of-state law firms?

OPINION

A lawyer may properly be a partner in two distinct law firms provided the circumstances of their association do not create confusion or a false impression. N.Y. State 231 (1972); Drinker Legal Ethics 203 (1953). Permitting an appearance of a partnership when there is in fact no partnership would be improper. DR 2-102(C); EC 2-13; cf. N.Y. State 175 (1971). Thus two law firms with some interlocking partners, occupying the same suite, would blur the relationship among the parties,and is disapproved. N.Y. City 579 (1938). On the other hand, two such firms in different boroughs of the same city would not necessarily offend. N.Y. City 561 (1941).

Should any partner in either of the firms be required to decline employment or to withdraw from employment under DR 5-105, then each firm in which he is a partner and all of its members would be disqualified from such employment. DR 5-105(D); N.Y. State 280 (1973).

This is not to imply that a law firm may permit its name to be used in a variety of jurisdictions, tantamount to a franchise. As we stated in N.Y. State 175 (1971):

> "At the same time, a multi-state law firm should not be allowed to grant local lawyers the right to use the firm name on a basis analogous to a franchise. A law firm may not license its name. Also,if there is no true partnership relationship with the local lawyer with a real sharing of profits, liabilities and professional responsibility, use of an out-of-state lawyer's name in the firm name would be misleading.
>
> "To avoid the danger of franchising and the risk of misleading the public, the Committee is of the opinion that a multi-state law firm may not use in New York a name composed of one or more lawyers not admitted to practice in New York unless the local lawyer is a true partner with a real share in the over-all profits, liabilities and professional responsibilities

OVER---

of the entire firm."

Applying the same tests, there is no reason why an out-of-state lawyer, not admitted to practice in New York, may not be a partner in one or more out-of-state law firms at the same time that he is a member of a New York law firm. The Code recognizes the propriety of a partnership among lawyers licensed in different jurisdictions where the jurisdictional limitations of the out-of-state partners are made clear on the firm's letterhead and any other permissible listings. DR 2-102(D); N.Y. State 223 (1971); ABA 316 (1967); Former Canon 33.

If a bona fide partnership exists between the out-of-state lawyer and the local firm, if there is no conflict in loyalties or of interest between the firms or with respect to their clients, if the partnerships are conducted in a manner and at locations that will avoid deception or confusion, and if the requirements of DR 2-102(D) are met, there would be no impropriety in an out-of-state lawyer being a partner in one or more out-of-state firms while being a partner in a New York law firm.