NEW YORK STATE BAR ASSOCIATION
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Committee on Professional Ethics

Opinion #355 - 9/10/74 (29-74)

Topic: Status and activities of out-of-state lawyer employed and residing in New York, and seeking admission to its Bar.

Digest: Law firm employing out-of-state lawyer now residing and seeking admission to practice in New York, may list him as an associate on its letterhead, provided jurisdictional limitations are shown; such associate's activities are limited to those authorized by New York Law.

Code: EC 3-5; 3-6; 3-9.
DR 2-102(D); 3-101(B)

QUESTIONS

1. May a law firm list on its letterhead as an associate a lawyer employee admitted to practice in another state but not in New York, who has moved to New York with the intention of being admitted and practicing in New York?

2. What activities may such a lawyer employee engage in prior to his admission to the New York Bar?

OPINION

1. The Code appears to impose no obstacle to the proposed listing, provided the firm letterhead makes clear the jurisdictional limitation on the associate's right to practice in this state, as required by DR 2-102(D). The Code requirement is directed essentially at avoiding what former Canon 33 described as "any misleading...representation which would create a false impression as to the professional position or privileges of the [person] not locally admitted". N.Y. City 884 (1974), however, suggests that the propriety of the proposed letterhead listing might depend on whether or not the firm maintains an office in the jurisdiction of the associate's admission. We do not believe that such condition is necessary or required by the Code. Accordingly, the listing would be permissible whether or not such an out-of-state office is maintained, assuming, of course, that the listing shows the necessary jurisdictional limits on the associate's right to practice in this state.

2. Although the listing is not improper, it is clear that prior to his admission the associate cannot, by virtue of his employment as an associate, undertake to act as if he were a member of the Bar of this state. DR 3-101(B) makes it improper for him to "practice

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law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction". Where, however, an individual may practice and what constitutes practice are matters of law, not of ethics, on which we express no opinion. See, EC 3-5 and EC 3-9 which recognize that "[a]uthority to engage in the practice of law conferred in any jurisdiction is not per se a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where he is not permitted by law or court order to do so". See also, ABA 316 (1967); ABA 198 (1939).

The associate awaiting admission may not assume responsibilities for firm clients not authorized by law. Absent a limited admission pro hac vice or some other appropriate authorization, he may not accept clients of his own or assume legal responsibilities for firm clients. Of course, he may assume the same responsibilities which may be properly delegated to other firm employees awaiting bar admission. See EC 3-6; N.Y. State 304 (1973); ABA 316 (1967); and cf. N.Y. City 884 (1974).
