NEW YORK STATE BAR ASSOCIATION

Committee on Professional Ethics

Opinion 658 (50-93)

Topic: Association with foreign lawyers.

Digest: Subject to any applicable legal restrictions, a New York law partnership may enter into a partnership with a Swedish firm provided the New York lawyers confirm that the partnership will not compromise the lawyers' ability to uphold ethical standards.

Code: DR 2-102(C) and (D); 3-103(A); EC 1-1; 1-2; 3-8.

QUESTION

May a Swedish firm of attorneys, organized as a stock company in accordance with Swedish law, ethically enter into a partnership with a firm of lawyers organized under the laws of New York State?

OPINION

Based on the affirmation by the Secretary General of the Swedish Bar Association, this opinion assumes that the referenced arrangement complies with applicable Swedish law and the rules of the Swedish Bar Association. Further, this opinion assumes that the arrangement complies with all aspects of New York substantive law and therefore addresses only the ethical issues presented by the proposed arrangement.

At the outset, it is important to recognize that a lawyer has an ethical obligation to maintain and improve the integrity and competence of the bar and to assure that those persons not qualified because of a deficiency in education or moral standards do not practice in this State. EC 1-1; EC 1-2. Whenever a New York attorney or law partnership enters into an affiliation with an attorney or firm from another jurisdiction, compliance with such obligations must be considered and fulfilled.

DR 3-103(A) prohibits a lawyer from forming a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law. *See also* EC 3-8. While on its face, this rule appears to prohibit affiliation with any person not licensed to practice law in New York State, this interpretation is tempered by DR 2-102(D). DR 2-102(D) provides that if a partnership is formed between lawyers of different jurisdictions, the partnership's letterhead should clearly denote the jurisdiction in which each attorney is qualified. Clearly, the rules contemplate the formation of partnerships between attorneys from different jurisdictions. Further, this Committee has held that the reference in DR 2-102(D) to "lawyers licensed in other jurisdictions" may also include lawyers licensed in jurisdictions outside the United States. N.Y. State 542 (1982).

In N.Y. State 542 (1982), this Committee held that since the educational requirements for admission to practice and the standards of professional conduct and discipline in New York and the United Kingdom were so similar, a partnership between a New York attorney and a British solicitor would not be barred. Similarly in N.Y. City 81-72, the determination as to whether a foreign lawyer was a "lawyer" within the meaning of DR 2-102(D) was dependent upon the similarity of each country's educational and ethical requirements.

More recently, in N.Y. State 646 (1993), we held that a partnership comprised of a New York lawyer and a Japanese "bengoshi" was proper insofar as the partnership did not compromise either lawyer's ability to uphold the ethical standards of their respective jurisdictions. In so deciding, we clarified N.Y. State 542 and stated that the fact a person is licensed to practice in a foreign jurisdiction does not, in and of itself, make a partnership with a New York lawyer permissible. Rather, we stated that whether a lawyer licensed in a foreign jurisdiction falls within the proscriptions of DR 3-103 is dependent upon whether the "training of and ethical standards applicable to the foreign lawyer are comparable to those of an American lawyer."

The determination of and inquiry into the educational and ethical requirements for attorneys licensed in foreign jurisdictions is necessary so that the New York lawyer's ability to uphold this State's professional standards is not compromised. In N.Y. State 646, we observed that the Japanese educational requirements were as rigorous as New York's and that "sufficient similarity" existed between the standards of professional conduct of New York and Japan.

Thus, the determination of whether a New York partnership may include a Swedish stock corporation[1] as a partner is dependent upon the educational

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[1] The formation of a partnership with a professional corporation is not prohibited by the Code. DR 2-102(C) prohibits a lawyer from holding himself or herself out as having a partnership with someone unless such partnership, in fact, exists. The ABA Model Code was amended in 1979 to expressly permit partnerships with professional corporations. While New York has maintained the former rule, this Committee has observed that while

requirements and ethical standards for Swedish attorneys. This Committee briefly examined the Swedish legal system and has found no reason why the proposed reorganization would violate the proscription against entering into a partnership with a nonlawyer. The inquirer states that all members of the Swedish corporation are also members of the Swedish Bar and two of the attorneys are licensed foreign legal consultants. Members of the Swedish Bar, "advocates," have obtained an undergraduate degree in law that requires four and one-half to six years of schooling, have passed a certifying examination, and have practiced for at least five years.[2] Furthermore, the Bar Association is a "prominent" institution in Sweden, which exercises disciplinary functions and decides lawyers' admission to and resignation from the Bar.[3] The proposed reorganization, therefore, does not appear to violate DR 3-103(A). A more thorough inquiry into the applicable Swedish rules and regulations to confirm that such an arrangement will not operate to interfere with the lawyers' ability to uphold the ethical obligations of their profession must be undertaken by the New York lawyer participants in the arrangement to satisfy themselves that the standards required by our opinion are met.[4] In particular, the New York firm must be assured that client confidences will be protected.

Allowing a New York law firm to enter into a partnership with a Swedish law corporation is bolstered by the recently amended Court of Appeals rules regarding the licensing of foreign legal consultants. Revised Rule 521.4, effective December 8, 1993, provides that a person licensed as a foreign legal consultant has all the rights and obligations of members of the New York bar, including the right of "affiliation in the same law firm with one or more members of the bar of this state." This affiliation may take the form of becoming a "partner in any partnership, or a shareholder in any professional corporation which includes members of the bar of this State or which maintains an office in this State." Rule 521.4(b)(iii). The stated purpose behind the revisions to the rules was to "clarify the rules and encourage the practice of foreign lawyers in New York." *Today's News*, N.Y.L.J., Nov., 18, 1993 at 1. The revised rules also subject foreign legal consultants to the same ethical standards and disciplinary rules as an admitted New York lawyer. Rule 521.5.

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the ABA amendment was meritorious, it was also unnecessary since DR 2-102(C) never prohibited the formation of a partnership with professional corporations. N.Y. State 509 (1979).

2 Alan N. Katz, Legal Traditions and Systems, 281 (1986)(five to six years of schooling); Kenneth R. Redden, IV Modern Legal Systems Cyclopedia at 4.200.35 - .36 (1989) four and one-half years); Goran Skogh, *Law and Economics in Sweden*, 11 Int'l L. & Econ. 319 (1991)(four and one-half years).

3 Redden, *supra* note 2, at 4.200.35 - .36.

4 See, e.g., N.Y. State 646 (1993); Rules of the N.Y. Court of Appeals for Admission of Attorneys and Counselors at Law, N.Y. Admin. Code tit. 22, part 520 (1993).

CONCLUSION

Based on the information presented above and this Committee's understanding of the Swedish legal system, the question posed is answered in the affirmative. If, however, the independent inquiry reveals substantial differences which would make it impossible for the New York attorney or law firm to uphold its ethical obligations, this question is answered in the negative.