

New York State Bar Association

Committee on Professional Ethics

Opinion 750 – 12/14/01

Topic: Application of disciplinary authority and choice of law rules.

Digest: Where conduct of a lawyer licensed in New York clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the ethics rules of that jurisdiction apply to the conduct.

Code: DR 1-105

QUESTION

What ethics rules apply to the conduct of an attorney admitted both in New York and another jurisdiction when the conduct in question takes place in the other jurisdiction?

OPINION

The inquirer is an attorney practicing in Chicago who represents individuals in immigration matters and has inquired about a possible conflict of interest involving a client and a former client. The attorney is admitted to practice in both New York and Illinois.

DR 1-105, which was added to the Code of Professional Responsibility in 1999, provides “choice of law” rules to be applied in the exercise of disciplinary authority in New York.¹ Paragraph A of this rule establishes the jurisdiction of the New York disciplinary authorities over New York admitted attorneys. Paragraph B deals with choice of law in the exercise of New York’s disciplinary authority. Under DR 1-105(A), a lawyer licensed in New York is subject to the disciplinary authority of New York regardless of where the lawyer’s conduct occurs. DR 1-105(B) provides that in the exercise of New York’s disciplinary authority, the applicable rules are not necessarily

¹ DR 1-105 is based on ABA Model Rule 8.5.

those of New York but may in certain circumstances be the rules of professional conduct of another jurisdiction.

DR 1-105(B)(1) addresses conduct in another jurisdiction in connection with a proceeding before a court before which a lawyer has been admitted to practice, either generally or for a special purpose. In that situation, the rules of the jurisdiction in which the court sits apply.

DR 1-105(B)(2) provides:

- a. If the lawyer is licensed to practice only in this state [New York], the rules to be applied shall be the rules of this state, and
- b. If the lawyer is licensed to practice in this state and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if the particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

Because the conduct in the inquiry does not involve court proceedings, DR 1-105(B)(1) is not applicable. Rather, the first clause of DR 1-105(B)(2)(b) applies to this inquiry. Because the attorney is admitted to practice in New York and Illinois, and the jurisdiction in which the attorney principally practices is Illinois, the ethics rules of Illinois are applicable to the inquirer's question. Furthermore, even if the inquirer principally practiced in New York, the particular conduct in the inquiry has its predominant effect in Illinois. In that situation as well, the ethics rules of Illinois are applicable. *Cf.* N.Y. City 1999-7 (New York ethics rules apply although clients resided in New Jersey and INS petitions were filed in New Jersey because the lawyer's office was in New York and all legal services were performed in New York).

CONCLUSION

If, in work unrelated to court proceedings, a lawyer is admitted in New York and is admitted and practices principally in another jurisdiction, that jurisdiction's ethics rules apply. However, where particular conduct clearly has its predominant effect in another jurisdiction (such as New York) where the lawyer is licensed to practice, the rules of that jurisdiction will apply.

(32-01)