New York State Bar Association

Committee on Professional Ethics

Opinion 801 – 11/17/06

Topic: Partnership with out-of-state attorney

Digest: Not proper for New York attorney to partner with out-of-state attorney if services performed by such attorney are the unauthorized practice of law

Code: DR 3-101(A), DR 3-102(A)

QUESTION

1. May a lawyer form a professional partnership with an attorney who is admitted in another state, but not in New York, where the out-of-state attorney would work exclusively from a New York office on matters arising in New York?

OPINION

2. A New York lawyer is contemplating forming a professional partnership with an attorney who is admitted in another state, but not in New York. The prospective partnership would maintain offices only in New York, and would work exclusively on matters arising in New York. The firm's letterhead and business cards would indicate that the out-of-state attorney is admitted solely in that other state. While the New York attorney and the out-of-state attorney would divide overall case-handling responsibilities equally, the New York attorney would handle all court appearances and retain ultimate responsibility for all legal work performed in the office. The out-of-state attorney would handle office work, including "paperwork" and meeting with clients, but only under the supervision of the New York attorney. The New York attorney would split fees with the out-of-state attorney.

3. As a threshold matter, it is clearly permissible for a New York attorney to form a partnership with a lawyer who is admitted only in another jurisdiction. N.Y. State 175 (1971). A New York lawyer may not, however, form a partnership with an out-of-state attorney if the out-of-state attorney would be engaged in the unauthorized practice of law in New York state. DR 3-101(A) ("A lawyer shall

not aid a non-lawyer in the unauthorized practice of law.").

4. The rules on unauthorized practice of law are creatures of statute (Judiciary Law §478), not the ethics code. As a consequence, this Committee does not opine on what specific acts by an out-of-state attorney constitute the unauthorized practice of law. We note, however, that a New York court has held that "when legal documents are prepared for a layman by a person in the business of preparing such documents, that person is practicing law." *Servidone Construction Corp. v. St. Paul Fire & Marine*, 911 F. Supp. 560, 568 (N.D.N.Y. 1995) (finding retainer agreement unenforceable because legal services provided in New York by out-of-state attorney constituted unauthorized practice of law, notwithstanding his partnership with an attorney admitted in New York).

5. If the out-of-state lawyer is engaged in the unauthorized practice of law, then the New York lawyer would violate DR 3-101(A) by partnering with the lawyer. If the out-of-state lawyer were to limit activities to those permitted of a non-lawyer, such as a paralegal, then the New York lawyer would violate DR 3-102(A) by partnering with the lawyer, as it is impermissible for a New York lawyer to share fees with a non-lawyer. The Committee expresses no opinion on whether these conclusions would apply to partnerships involving an out-of-state lawyer—such as a retired lawyer—admitted in a state other than New York but not working in New York.

CONCLUSION

6. Where the legal services performed in New York by an out-of-state attorney would constitute the unauthorized practice of law in New York under DR 3-101(A), it is unethical for a New York attorney to form a partnership with the out-of-state attorney.

(7-06)