NEW YORK STATE BAR ASSOCIATION
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New York State Bar Association
Committee on Professional Ethics

Opinion 944 (11/8/12)

Topic: Joint venture between PLLCs

Digest: On the facts given, it is permissible for two PLLCs to create a joint venture functioning as a law firm.

Rules: Rule 1.0(h), Rule 7.1(a), Rule 7.5(a), Rule 7.5(d)

QUESTION

1. Inquiring counsel inquires as follows:

> May two solo practitioners, each of whom has practiced as a professional Limited Liability Corporation (*e.g.,* "John Smith, Attorney At Law, PLLC") form a law firm without a partnership by creating a joint venture of their PLLCs for the purpose of collaborating on cases and sharing profits, using the firm name "Smith and Jones," to be followed by the notation "A Joint Venture of John Smith, Attorney At Law, PLLC and Jane Jones, Attorney At Law, PLLC"?

OPINION

2. In N.Y. State 861 (2011), this Committee determined, *inter alia*, that "[t]he New York office of a law firm operating as a PLLC may have as one of its owners another PLLC …."

3. Thus, the fact that two PLLCs would be the "owners" or participants in the contemplated entity is permissible.

4. In Florida Opinion 93-6, the Florida State Bar Association Committee on Professional Ethics, while expressing caution that a joint venture arrangement not be utilized to evade fee splitting restrictions or other regulatory purposes, opined:

> Initially it must be noted that neither the Rules Regulating The Florida Bar nor opinions issued by the Professional Ethics Committee of The Florida Bar contemplate joint venture arrangements between law firms. This does not mean, however, that an attorney is ethically precluded from practicing

> simultaneously in two bona fide law firms. See Florida Ethics Opinion 76-7; ABA Informal Opinions 83-1499 and 1253.

5. In South Carolina Opinion 05-102, the South Carolina Bar Ethics Advisory Committee determined that a Georgia law firm and a South Carolina attorney entering into a joint venture would not be a prohibited legal referral service precisely because the advertising that it would be doing was being performed as a joint venture.

6. In Pennsylvania Opinion 90-21, the Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility, in an informal opinion, approved the formation of a similar joint venture to that being proposed here, and specifically opined:

> Your letterhead must reflect the true nature of the relationship between the two firms. Reading the first sentence of Rule 7.5(a) with Rule 7.1(a), I believe that each firm must disclose that it is practicing in a joint venture with the other, and Rule 7.5(d) mandates that the true nature of the relationship be disclosed.

7. What the Pennsylvania Bar opinion mandated is precisely what the inquiring attorney here proposes.

8. New York Rule of Professional Conduct 1.0(h) provides:

> "Firm" or "law firm" includes, but is not limited to, a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a qualified legal assistance organization, a government law office, or the legal department of a corporation or other organization.

9. As observed in Simon's New York Rules of Professional Conduct Annotated (2012 ed.) (West), in Rule 1.0(h), "firm" or "law firm" is "defined a bit more broadly than it was in the Definitions section of the old Code," and "is not meant to be exhaustive." Simon continues,"[T]he word 'firm,' has a chameleon quality and changes with the context."

10. As further observed therein (at p. 29):

> Rule 1.10(a), the main rule regarding imputation of conflicts, imputes conflicts arising under Rules 1.7, 1.8, and 1.9 to all lawyers who [are] "associated in a firm." Thus, the definition of "firm" is crucial for conflicts of interest analysis.

11. In Pennsylvania Opinion 2005-90, the Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility, after reaching the same conclusion as Florida Opinion 93-6, *supra*, and South Carolina Opinion 05-102, *supra*, regarding the permissibility of practice via the same sort of joint venture proposed by the current inquiring counsel, determined:

> Although your inquiry does not recite the legal structure of the "joint venture", nothing in your inquiry overcomes the conclusion that the joint venture will constitute a "firm" as defined in Rule 1.0(c).

12. In the instant situation, the inquiry acknowledges that the two solo practitioners would be "forming a law firm" by entering into this joint venture, with all of the attendant consequences.

CONCLUSION

13. The proposal is answered in the affirmative, with the caveat noted above, and solely insofar as the New York Rules of Professional Conduct are concerned. This Committee does not address legal issues, including those regarding the effect which the proposed mode of organization might have upon the member PLLCs or the individual attorneys.

(59-12)