



**New York State Bar Association Committee
on Professional Ethics**

Opinion 1250 (01/06/2022)

Topic: Multi-jurisdictional practice; partnership with non-United States lawyers; imputation of conflicts

Digest: The New York Rules of Professional Conduct (the “Rules”) govern the conduct of an attorney admitted to practice only in New York who partners with a non-United States law firm. Whether the Rules permit a New York lawyer to form a partnership with an Italian law firm depends on whether the New York lawyer, upon independent inquiry, is satisfied that the training and ethical standards applicable to the Italian lawyer are comparable to those of an American lawyer. Conflicts of interest arising under Rules 1.7, 1.8 or 1.9 are imputed vicariously between the New York admitted lawyer and the Italian law firm pursuant to Rule 1.10(a).

Rules: 1.10(a); 5.4(b); 8.5(a); 8.5(b)(2)(ii)

FACTS:

1. The inquirer is a solo practitioner admitted in New York and no other jurisdiction and has a physical office in New York only. While continuing to provide legal services as a solo practitioner, he would like to enter into a separate limited liability partnership for the practice of law with an Italian firm that practices law in Italy. None of the partners in the Italian firm are licensed to practice law in New York or in any other jurisdiction in the United States. The Italian firm will also continue to practice law in Italy in a separate entity (i.e., not in the LLP with the inquirer).

QUESTIONS:

2. Which jurisdiction’s disciplinary rules apply to govern inquirer’s proposal to enter into a partnership with an Italian law firm?
3. May a New York lawyer enter into a partnership with an Italian law firm?
4. Is the law firm created by the partnership between the New York lawyer and the Italian firm subject to New York’s rules on conflicts of interest?

OPINION:

What Disciplinary Rules Apply?

5. The first question the committee must address is what rules apply to determine the ethical propriety of the inquirer’s proposed conduct. Because he is admitted to practice in New York, the inquirer is always subject to the disciplinary authority of this State, regardless of where any alleged conduct may take place. See Rule 8.5(a). The inquirer is also not subject to the “predominant effect”

principles of Rule 8.5(b)(2)(ii) that might subject the inquirer to the disciplinary authority of another jurisdiction, because the inquirer is not admitted in any other jurisdiction, and New York’s version of Rule 8.5(b)(2)—unlike ABA Model Rule 8.5(b)(2)—applies only to lawyers who are admitted in more than one jurisdiction.

May a New York Lawyer Partner with a Lawyer Admitted to Practice in Italy?

6. Rule 5.4 proscribes a number of relationships between a lawyer and a non-lawyer. E.g., “a lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.” Rule 5.4(b). Were “non-lawyer” construed to mean anyone not licensed to practice law in New York, the partnership contemplated by the inquirer and, doubtless hundreds if not thousands of other multi-jurisdictional firms, would be in violation of Rule 5.4(b) and other provisions of Rule 5.4, as well. See, e.g., N.Y. State 542 (1982). We have long expressed the view, however, and repeat it here today, that a New York-licensed lawyer may properly partner with a lawyer duly licensed in another jurisdiction provided that the New York lawyer, upon independent inquiry, is satisfied that the “training of and ethical standards applicable to the foreign lawyer are comparable to those of an American lawyer.” N.Y. State 646 (1993). As we explained in N.Y. State 1072 (2015), which considered a proposed partnership between a New York firm and a Japanese *benrishi*, restricting partnerships to lawyers with comparable training and ethical standards will help to assure that a proposed multi-jurisdictional partnership “will not compromise the [New York] lawyer’s ability to abide by the ethical standards of this State, including the standards governing attorney-client confidentiality.”

Must the New York Attorney and the Italian Firm Clear Potential Conflicts of Interest?

7. Although the inquirer and the Italian firm have structured their relationship to limit their joint practice and will continue to separately practice law in separate entities in each location in addition to practicing in partnership with each other, the “firms must still comply with the conflict provisions of Rule 1.10(a), which will impute conflicts of each firm to the other[s].” Rule 1.10(a) provides:

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 1.7, 1.8 or 1.9, except as otherwise provided therein.

8. We described the effect of Rule 1.10(a) in N.Y. State 876 (2011):

For decades, both this Committee and various New York courts have consistently stated that where a lawyer is “associated” with more than one law firm within the meaning of the imputation rule, all of the law firms with whom that lawyer is associated are treated as one law firm for purposes of conflicts of interest. Accordingly, under Rule 1.10(a), all conflicts in each firm are imputed to all lawyers in all of the firms associated with a common lawyer. [Citations omitted.]

9. Rule 1.10(e) requires a New York law firm to check all proposed engagements against current and previous engagements. As N.Y. State 876 indicates, when two firms share a common

partner or other member, they are treated as one for conflicts purposes. Here, the New York lawyer is a common partner in his own firm and the Italian firm with whom he is forming an LLP. Consequently, in order to comply with Rule 1.10(e), the New York firm must include engagements of the Italian firm in his conflict checking system.

CONCLUSION:

10. The New York Rules of Professional Conduct govern the conduct of an attorney admitted to practice in New York only who partners with a non-United States law firm. Whether the Rules permit a New York lawyer to partner with an Italian law firm depends on whether the New York lawyer, upon independent inquiry, is satisfied that the training and ethical standards applicable to the Italian lawyer are comparable to those of an American lawyer. Conflicts of interest arising under Rules 1.7, 1.8 or 1.9 are imputed vicariously between the New York admitted lawyer and the Italian law firm pursuant to Rule 1.10(a).

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