

Advisory Opinion 1983-2

A Washington, D.C. lawyer inquired into the ethical propriety of announcing to New Mexico lawyers his availability to perform professional services in international commercial law.

New Mexico Disciplinary Rule 2-105, Limitation of Practice, N.M. Stat. Ann. (1982 Repl. Pam.) permits lawyers to distribute to other lawyers and publish in journals an announcement of their availability to act as a consultant to or an associate of other lawyers in a particular branch of law. The rule regulates the content, manner, and frequency of announcing and advertising services. Thus, advertising by one lawyer for consultation services with another is permitted by this D.R.

Another issue which this inquiry raises is that of the regulation of the practice of law by a lawyer licensed in a different jurisdiction but associated with a New Mexico lawyer. ABA Formal Opinion 316, entitled *The Practice of Law Across State Lines*, noted that an arrangement between lawyers of different states is not prohibited so long as the limitations of each lawyer with regard to the practice in each state is clearly represented to all clients and the public. The opinion further states:

Of course, only the individuals permitted by the laws of their respective states to practice law there would be permitted to do the acts defined by the state as the practice of law in that state, but there are no ethical barriers to carrying on the practice by such a firm in each state so long as the particular person admitted in that state is the person who, on behalf of the firm, vouched for the work of all of the others and, with the client and in the courts, did the legal acts defined by that state as the practice of law.

ABA Comm. on Professional Ethics and Grievances, Formal Op. 316 (1967) .

Thus, as long as the lawyer admitted in New Mexico does the legal acts considered the practice of law in New Mexico, the consulting arrangement would not be a violation of ethics. (Informal Opinion No. 1355, *Affiliation of Law Firms for MultiState Office Practice*, March 29, 1976, refers back to Formal Opinion No. 316 cited herein. That is apparently the most recent ABA Opinion on this matter.)

In *In the Matter of Bailey*, 97 N.M. 88, 637 P.2d 38 (1981), an attorney was publicly censured for violations of the Canons of Ethics in that he aided a person not authorized to practice law in New Mexico to engage in practice in this state and further held that person out as his partner in his advertising. Apparently, the censured attorney encouraged the non-New Mexico attorney to actively conduct litigation in New Mexico. It does not appear that the advertising of availability to consult will be prohibited by this case; however, the New Mexico attorney must take care that he does not encourage the unauthorized practice of law in contravention of D.R. 3-101.

Finally, D.R. 1-107 requires full disclosure regarding the division of fees with another lawyer.