Advisory Opinion 1983-4

A New Mexico law firm has requested an opinion on two inquiries:

> I. Does the combination of a New Mexico law firm and an Arizona law firm violate the Code of Professional Responsibility?
>
> II. May the combined firm, operating as a partnership, use a name which combines the names of both firms?

For the reasons expressed below, the opinion of the committee is that the law firm, comprised of a partnership of lawyers together with their associates, may use the combined name in New Mexico and that such association will not violate the Code of Professional Responsibility as long as letterheads and other permissible listings make clear the jurisdictional limitations on the lawyers not licensed to practice in each jurisdiction. ' Further, the lawyers should take care that members of the firm not admitted in New Mexico do not practice in this State in an unauthorized fashion.

In rendering this opinion, the committee has made certain assumptions based on the language of the inquiries. First, the letterhead, on which the inquiry is made, indicates that the structure of the New Mexico firm is that of a professional association. *See* N.M. Stat. Ann. §§ 53-6-1 through 53-6-14 (1978). The inquiry, however, indicates that the structure of the new firm will be that of a partnership. Thus, questions as to whether § 53-6-13, *supra*, prohibiting merger of domestic and foreign professional corporations, may be violated are beyond the scope of this opinion. Similarly, questions as to whether such a violation of corporate law would be grounds for discipline are not addressed. Second, the committee assumes that Arizona would answer the inquiries in an opinion similar to this one.
Rule 29(a) of the Arizona Rules of the Supreme Court. Thus, no questions as to D.R. 3-101(B), N.M. Stat. Ann. (1982), are presented. Third, the committee assumes 'that some of the named partners will not be admitted in all jurisdictions.

It is the opinion of the committee that consideration of the history of the pertinent code provision leads to an affirmative answer to both of the inquiries. A recent New Mexico case may, however, make it difficult to give a quick affirmative answer to the second inquiry.

The pertinent disciplinary rule reads as follows:

> A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all jurisdictions; however, the same firm name may be used in each jurisdiction.

D.R. 2-102(D), N.M. Stat. Ann. (1982). This rule on its face allows the formation of interstate firms provided that letterheads and listings make clear the jurisdictional affiliations of the lawyers involved. The rule expressly allows the same firm name to be used in all jurisdictions.

Prior to the adoption of D.R. 2-102(D) in 1969, the old Canons and opinions thereunder required jurisdictional affiliation to be made clear, even in the firm name. ABA Canon 33, as amended Sept. 30, 1937; ABA Op. 316 (Jan. 16, 1967); ABA Op. 318 (July 3, 1967). The new Code, in D.R. 2-1002(D), *supra*, deleted language which required care to be taken to avoid creating a false impression in the firm name as to the privileges of a member not locally admitted. The new Code expressly states, "the same firm name may be used in each jurisdiction." An informal opinion issued since the adoption of the new Code notes the reversal in ethical policy and affirms the right to use one firm name in more than one jurisdiction, irrespective of whether the named partners are licensed to practice in all jurisdictions. Inf. Op. 1355 (3/29/76).

A recent Louisiana case is to the same effect. In *Singer Hunter Levine Seeman & Stuart v. Louisiana State Bar Ass'n*, 378 So.2d 423, 6 A.L.R. 4th 1244 (1979), only the partner Stuart and an associate were licensed to practice in Louisiana. The remaining members and associates of the firm, organized under New York law, were admitted in New York or California, where the firm also had an office. The firm's letterhead indicated that Stuart and the associate were the only firm attorneys admitted in Louisiana. The court held this situation to be clearly envisioned by D.R. 2-102(D). It is noteworthy that *Singer* appears in an annotation discussing the propriety of the formation of a multistate law partnership. *Annot.,* 6 A.L.R. 4th 1251 (1981). The only other case discussed in the annotation concerned whether a firm with no named partners being licensed in a state could open a branch office in that state because one associate was so licensed.

This case is inapplicable here because at least one named partner is licensed in each state. Nor is *In re Professional Ethics Advisory Committee Opinion No. 475*, 89 N.J. 74, 444 A.2d 1092 (1982), persuasive. That case, which rejected the application of Jacoby & Meyers, neither of whom was licensed in New Jersey, to use that firm name in New Jersey, was based on New Jersey's disciplinary rule, which is the exact opposite of ours. N.J.D.R. 2-102(C)ls however clause provides, "however, a firm name may not be used in New Jersey unless all those names are or were members of the bar in New Jersey."

It is also noteworthy that in arriving at its result, *Singer* struck down, as unconstitutionally infringing on the inherent power of the judiciary to regulate the practice of law, a statute in conflict with D.R. 2-102(D). Thus, to the extent that there may be a conflict between D.R. 2-102(D) and N.M. Stat. Ann. § 36-2-27 (1978), the rule controls, under the authority of *Singer* and under similar New Mexico authority. *In re Sedillo*, 66 N.M. 267, 347 P.2d 162 (1959).

Indeed, the ethics of using one firm name and only identifying jurisdictional affiliation when identifying the members and associates appears so well settled that the proposed final draft of the Model Rule of Professional Conduct has rewritten the rule to this effect with virtually no comment. The proposed rule reads:

> A law firm practicing in more than one jurisdiction may use the same name in each jurisdiction, but identification of the members and associates in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

Rule 7.5(b) , Model Rules of Professional Conduct (Proposed Final Draft, may 30, 1981).

Thus, under the proposed rule, the new firm may use one letterhead listing jurisdictional limitation as to each person. Or the firm may use different letterhead for its Arizona office than it does for its New Mexico office. If some named partners are not admitted in New Mexico, that fact should appear on the local letterhead. Similarly that fact should appear in any telephone directory or other listing.

The only hesitation the committee has in affirmatively answering both inquiries without qualification is the recent case of *In the Matter of Bailey,* 97 N.M. 88, 637 P.2d 38 (1981). That case appears to involve aiding the unauthorized practice of law in this State and holding a person out as a partner in advertising, although the person had not been admitted to this bar. Perusal of the Supreme Court file in that case, however, shows a number of flagrant violations by an attorney who appeared to be unaware of the disciplinary rules. There was never any jurisdictional limitation on practice mentioned and the New Mexico attorney permitted his unlicensed partner to actively engage in the practice of law here.

The committee believes that the *Bailey* case does not require a negative answer to the inquiries here. However, certain precautionary measures should be taken by any combined firm. The firm should scrupulously follow the dictates of R. Civ. P. 89.1, N.M. Stat. Ann. § (1982), and R. Crim. P. 53.1, N.M. Stat. Ann. (1982), on unadmitted counsel practicing in New Mexico. The firm should also follow the dictates of D.R. 2-102(D), in that the firm name should be accompanied by jurisdictional limitation in letterheads and listings. However, the plain intent of D.R. 2-102(D), as well as common sense, allows the use of a firm name without such accompaniment at other times, e.g., in telephone answering, signing of pleadings, and the like. It would be extraordinarily cumbersome to require jurisdictional limitation any time the firm name is mentioned.

In conclusion, based on the foregoing authorities, the opinion of the committee is that:

1. a combination of a New Mexico and Arizona firm may use a combined name in New Mexico, provided that:

    a. the firm's letterhead and other permissible listings make clear the jurisdictional limitations on practice of the members and associates;

    b. care is taken that in any dealings with the public, misrepresentations do not occur; and

    C. care is taken that the rules governing unauthorized practice are not violated.