

**THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 597**

May 2010

QUESTION PRESENTED

Under the Texas Disciplinary Rules of Professional Conduct, may a Texas lawyer practice law as a partner or shareholder in a Texas office of a law firm that includes partners or shareholders who are licensed to practice law only in jurisdictions other than Texas and who work principally in offices of the law firm outside of Texas but who from time to time perform legal services in the law firm's Texas office?

STATEMENT OF FACTS

Partnership XYZ is a law firm composed of three partners – X, Y, and Z. The partnership has three offices – one in Texas, one in New Mexico, and one in Mexico. X, who is a Texas resident and a member of the State Bar of Texas, has his office in Texas and most of his work is done in that office. Y, a lawyer licensed to practice law in New Mexico, has his office in New Mexico and conducts most of his law practice in the New Mexico office. Z is a citizen and resident of Mexico who is licensed to practice law in Mexico and has his office in Mexico, where he carries out most of his legal work. Y and Z are not licensed to practice law in Texas.

In their law practice as partners in XYZ, X, Y, and Z are in contact daily by telephone and e-mail. In addition, from time to time each of the lawyers participates by telephone or electronically in work for XYZ clients who are located out of the state or country in which the particular lawyer has his office. Also, from time to time Y and Z travel to Texas to work on legal matters for clients of XYZ. The work done by Y or Z in Texas is normally for brief periods of a week or less but occasionally the work on a particular project may require Y or Z to work primarily in Texas for a longer period of up to several months. If Y or Z participates in representation of clients before courts or administrative bodies in Texas, he complies with all applicable local rules of the court or administrative body concerned, including any requirements with respect to admission to practice *pro hac vice*. Similarly, from time to time X travels to New Mexico or Mexico and performs legal services related to a particular project for a temporary period that may extend up to several months in unusual cases.

DISCUSSION

The Texas Disciplinary Rules of Professional Conduct govern the conduct of lawyers

licensed in Texas. See Rule 8.05. Thus X is subject to the Texas Disciplinary Rules, but Y and Z are not themselves generally subject to these Rules.

Rule 5.04(a) prohibits the sharing of legal fees with a non-lawyer in most circumstances. Rule 5.04(b) prohibits a Texas lawyer from practicing law in a law partnership with a non-lawyer. Rule 5.04(d) applies essentially the same prohibition to the practice of law in a professional corporation or association if a non-lawyer owns any interest in, or has a control position in, the corporation or association. For purposes of these Rules, the term “lawyer” must include lawyers licensed in jurisdictions other than Texas; a contrary interpretation would require the obviously erroneous conclusion that Texas attorneys are barred from practicing in any law firm having a partner or member who is licensed in another state but who is not licensed in Texas. Thus, for purposes of Rules 5.04(a), (b) and (d), the term “non-lawyer” does not include a lawyer licensed in any state of the United States, in Mexico, or in any other country that licenses lawyers under a system that is similar to the licensing system used in Texas. This conclusion is consistent with American Bar Association Standing Committee on Ethics and Professional Responsibility Formal Opinion 01-423 (September 22, 2001), which concluded that it is permissible under similar provisions of the Model Rules of Professional Conduct for U.S. lawyers to form law partnerships with foreign lawyers, so long as the foreign lawyers are members of a recognized legal profession in a foreign jurisdiction and the arrangement is in compliance with the laws of jurisdictions where the firm practices. The conclusion reached here also finds support in Rule 7.01 of the Texas Disciplinary Rules concerning permissible law firm names and letterhead. Rule 7.01(b) requires in the case of a law firm with offices in more than one jurisdiction only that “identification of the lawyers 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.”

Although a lawyer licensed under the laws of jurisdictions other than Texas is a “lawyer” rather than a “non-lawyer” for purposes of the requirements of Rule 5.04, the provisions of Texas law prohibiting persons who are not lawyers licensed in Texas from engaging in the unauthorized practice of law in Texas, section 81.101 et seq. of the Texas Government Code, are applicable to such non-Texas lawyers. Under Rule 5.05(b) of the Texas Disciplinary Rules of Professional Conduct, a Texas lawyer is prohibited from assisting “a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.” Thus, under Rule 5.05(b), X would be prohibited from assisting lawyers not licensed in Texas, including Y and Z, in the unauthorized practice of law in Texas. Y and Z would be subject to legal action if they engaged in unauthorized practice of law in Texas contrary of the prohibitions of Texas law. As noted in Comment 3 to Rule 5.05, the question of what constitutes “the unauthorized practice of law” is not addressed in the Texas Disciplinary Rules of Professional Conduct and instead the definition is left to judicial development. Comment 3 adds:

“Judicial development of the concept of ‘law practice’ should emphasize that the concept is broad enough – but only broad enough – to cover all situations where there is rendition of services for others that call for the professional judgment of a

lawyer and where the one receiving the services generally will be unable to judge whether adequate services are being rendered and is, therefore, in need of the protection afforded by the regulation of the legal profession.”

Comment 5 to Rule 5.05 sets forth general principles that may guide in the application of the concept of unauthorized practice of law in the case of lawyers licensed in other jurisdictions:

“Authority to engage in the practice of law conferred in any jurisdiction is not necessarily a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where doing so violates the regulation of the practice of law in that jurisdiction. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by individual states. In furtherance of the public interest, lawyers should discourage regulations that unreasonably impose territorial limitations upon the right of a lawyer to handle the legal affairs of a client or upon the opportunity of a client to obtain the services of a lawyer of his or her choice.”

In 2002, the American Bar Association House of Delegates adopted recommendations of the American Bar Association Commission on Multijurisdictional Practice. A principal recommendation adopted was an amended version of American Bar Association Model Rule of Professional Conduct 5.5, the prior version of which was essentially the same as the current version of Rule 5.05 of the Texas Disciplinary Rules. The amended Model Rule 5.5(b)(1) generally prohibits a lawyer who is not admitted to practice in a jurisdiction from establishing “an office or other systematic and continuous presence” in that jurisdiction for the practice of law. Model Rule 5.5(c) specifies several circumstances in which a lawyer licensed in another state is permitted to provide legal services in a jurisdiction on a temporary basis. Although a number of states have adopted a form of the current version of Model Rule 5.5, the Texas Disciplinary Rules of Professional Conduct have not been amended on the subject of multijurisdictional practice.

In the absence of a specific rule or substantial case-law development on this subject, the contours of the term “unauthorized practice of law” in Texas Disciplinary Rule 5.05(b) as applied to multijurisdictional practice are not currently well defined. In spite of the present uncertainty as to exactly what conduct would constitute unauthorized practice of law in Texas in the case of multijurisdictional practice, it is the opinion of this Committee with respect to the circumstances here considered that the activities of Y and Z in Texas do not constitute the unauthorized practice of law in Texas and consequently that X is not in violation of Rule 5.05(b). Thus, in cases where a Texas lawyer is a partner or member of a law firm that also includes duly licensed non-Texas lawyers who normally practice in offices of the firm outside of Texas, the Texas lawyer does not violate Rule 5.05(b)’s prohibition on assisting in the unauthorized practice of law when non-Texas lawyers who are members of the firm from time to time provide, in compliance with any applicable local rules and without themselves establishing a systematic and continuous presence in Texas, legal services in Texas.

CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct, a Texas lawyer may practice law as a member of a law firm with lawyers who are licensed only in jurisdictions other than Texas and who practice law in offices of the law firm located outside of Texas. The Texas lawyer does not improperly assist in the unauthorized practice of law when non-Texas lawyers, who are members of the law firm duly licensed in another jurisdiction and who normally practice in offices of the law firm outside of Texas, from time to time provide, in compliance with any applicable local rules and without themselves establishing a systematic and continuous presence in Texas, legal services in Texas as members of the law firm.