

INFORMATIONAL PACKET

INTERSTATE
LAW FIRMS

COURTESY OF

THE FLORIDA BAR ETHICS DEPARTMENT

OPINION 79-1
September 27, 1979

An attorney practicing as a professional association can participate, in the form of his corporation, as a partner in a partnership of attorneys.

CPR: EC 2-13

Opinion: 71-58

Vice Chairman Mead stated the opinion of the committee:

This inquiry involves the question of whether an attorney practicing as a professional association can participate, in the form of his corporation, as a partner in a partnership of attorneys.

This Committee found such a proposal to be improper in Opinion 71-58 [since withdrawn]. The rationale expressed at that time was that, while the traditional partnership of attorneys reflected a relationship clearly understood by the public, interjecting a corporate partner into this relationship "would surely lead to confusion and perhaps even some measure of deception because of the hybrid nature of the entity created." The Committee also relied on language similar to that found in EC 2-13 to the effect that a lawyer "should not hold himself out as being a partner or associate of a law firm if he is not one in fact."

The basic issue here is whether or not the proposed course of action is such that it will create the confusion that 71-58 was designed to prevent. In this connection, it must be noted that the number of attorneys practicing in professional associations has increased dramatically from 1971 to date, and the public has become aware of the use of the corporate form by lawyers. Further, in a partnership consisting of professional associations, unlimited liability exists as to each corporate partner; this should protect the clients' interests, as long as full disclosure is made, in dealing with that partner.

The majority of the Committee finds that as long as the professional corporation partners in the law firm partnership are clearly identified in all instances in which the names of the partners are listed, the likelihood of confusion arising out of this relationship, which may have existed eight years ago, is no longer strong enough to require us to dictate to any attorney the type of entity to be used by him in his practice of law. Accordingly, we find Opinion 71-58 no longer viable and it is hereby overruled.

A minority of the Committee takes the view that a combination of different entities in a single organization engaged in the practice of law would be misunderstood by the public and would require proscription of the proposed course of action in accordance with 71-58.

CONSOLIDATED OPINIONS 77-7, 77-9 and 77-10
April 7, 1978

It is improper for interstate law firms to maintain, under varying formats, a Florida office operated by a resident Florida attorney who is not a partner in the firm. A Florida lawyer may be a member of an interstate firm if the relationship is a bona fide partnership in which the profits and losses of the several offices are actually shared.

CPR: EC 2-11, DR 2-102, DR 2-102(A)(4), (B), (C) and (D), DR 2-103, DR 2-107;
Canon 3, Canon 6

Opinions: 65-15, 66-64, 70-29, 70-36, 70-55, 71-49, 72-29, 74-12, 74-48, 75-19, 75-41,
76-8, 76-10, 76-17, 76-51, 77-25; Connecticut Informal Opinion, 12/1/76

Vice Chairman Waas stated the opinion of the committee:

The inquiring attorneys ask whether respective interstate law firms may maintain, under varying formats, a Florida office operated by a resident Florida attorney who is not a partner in the firm. The inquiries involve individual Florida attorneys occupying positions varying from that of a salaried associate of an out-of-state firm, a Florida lawyer being "of counsel" to an out-of-state firm, and a Florida lawyer establishing an association with an out-of-state firm which is not a partnership arrangement. In each case the Florida attorney's name would be listed on the out-of-state firm's letterhead which would contain that firm's name. The Committee majority answers in the negative.

The proposed conduct would be inconsistent with principles reflected in numerous prior Committee opinions rendered under the CPR. Opinion 74-12 disapproved of Florida branch offices of out-of-state firms designed primarily to serve out-of-state clients who happen to spend time in Florida. Opinion 74-48 affirms (as continuing to be valid under the Code) language from Opinion 65-15 (which was decided under the former Canons) [and has since been withdrawn] that a Florida lawyer may be a member of an interstate firm, with the proviso that "the partnership, however, must be a full, bona fide partnership in which the profits and losses of the several offices are actually shared according to the terms of the partnership agreement." Opinion 72-29 reflects the requirement of a "true interstate partnership" with reference to a Florida lawyer's affiliation with an out-of-state firm for the practice of law in Florida. Opinion 70-55 approves an arrangement between a Florida lawyer and an out-of-state lawyer for the practice of law in Florida only if the arrangement constitutes a partnership and not if the Florida lawyer is only associated with the out-of-state firm. As indicated in those opinions, the only Code definition and sanction of an interstate partnership is that contained in DR 2-102(D): "A partnership. . . between or among lawyers licensed in different jurisdictions." Accordingly, the Committee majority does not find the proposed conduct to be sanctioned by either the Florida Code or by prior opinions of this Committee. As indicated in Opinion 70-55, the requirement of a true, actual, bona fide, legitimate partnership for those holding themselves out as partners is mandated by DR 2-102(C).

Concurring Opinion

The existence of additional, separate reasons for disapproving the conduct proposed in two of the inquiries—and the existence of concurring opinions by some Committee members as to those two inquiries, but only for those additional, separate reasons referred to below—requires that the formats under which the Florida offices would be operated under each of the three inquiries be set forth herein below in more detail.

In inquiry 77-7, the question is whether a Florida attorney may be “associated” with an out-of-state firm as a Florida “Resident Associate” and identified on the out-of-state firm's letterhead stationery as being the local office of that firm. Such stationery would contain at the top the out-of-state firm's name, address and telephone number and would contain in the margins identifications of numerous “local offices” of the firm at various locations around the county, e.g., hypothetically for present purposes, a “Denver office,” a “Cleveland office,” etc. Such identifications of those other offices, hypothetically for present purposes as to a Florida office, would be in the following manner: “Miami, Florida office, John Doe, One Dade County Boulevard, Miami, Florida,” followed by John Doe's telephone number.

The Florida attorney's “association” with the out-of-state firm—and apparently such associations of other “local offices”—would involve a contractual arrangement under which a “national network” of such Resident Associates is established, with the out-of-state firm whose name appears at the top of the letterhead acting as the principal office. Each Resident Associate would enter into a contract with the principal firm under which that firm agrees to refer cases to the Resident Associate, the Resident Associate agrees to accept referrals of cases and to show on his own, separate Florida letterhead that he is “associated” with the out-of-state firm, and the Resident Associate agrees to remit to the out-of-state firm 10% of fees collected from such referral clients. A separate “disclaimer contract” between the principal firm and each Resident Associate would state that the Resident Associate is an “independent contractor” and that neither the out-of-state firm nor the Resident Associate lawyer is responsible for the acts of the other.

Additional reasons of the full Committee for disapproving the foregoing arrangement under inquiry 77-7 are as follows. The arrangement would be in violation of DR 2-102, especially 2-102(A)(4) as to lawyers which may be listed on a firm's letterhead, and 2-102(B) as to practicing under a “name that is misleading as to . . . lawyers practicing under such name, or a firm containing names other than those of one or more of the lawyers in the firm. . .” See Opinion 76-8 as to avoiding misleading appearances which would be created by listing on a letterhead the names of lawyers who are not employees or members of the firm. See also Opinions 76-10 [since withdrawn] and 76-17 [since withdrawn] as to the misleading use of the term “associates.” In addition, the arrangement proposed in inquiry 77-7 would be violative of DR 2-103 as to solicitation of professional employment and violative of DR 2-107 as to splitting legal fees with another lawyer not in proportion to services performed and responsibilities assumed.

In inquiry 77-10, an out-of-state firm would staff its Florida office with a Florida-admitted attorney who is paid a salary by the firm for which he works full-time, the Florida office using a letterhead containing the name of the out-of-state firm and listing the Florida lawyer's name below and to the left of that name as "of counsel." That arrangement is inconsistent with DR 2-102(B) and EC 2-11, which deal with practicing under a name that is misleading, and is also inconsistent with DR 2-102(A)(4), governing use of the designation of "of counsel." As stated in Opinion 75-41, the term "of counsel" is defined to connote a continuing relationship with a firm, which relationship is other than that of an associate or a partner and which places the attorney in a less than fully active role. See also Opinions 72-29, 71-49, 70-36 [since withdrawn], 70-29 and 66-64 [since withdrawn]. Also, if an "of counsel" designation of a Florida lawyer in such a position would meet the foregoing definitional requirements, the Florida office of such an out-of-state firm would not meet the requirement stated in Opinion 74-12 and 74-48 that the Florida office of an out-of-state firm must include a full-time Florida practitioner and constitute an active and bona fide part of the firm's practice.

Dissenting Opinion

A substantial minority of the Committee dissents as to the negative answer to inquiry 77-9 reflected in the majority opinion.

In inquiry 77-9 the Florida office of an out-of-state firm would be staffed by a Florida-admitted associate of the firm, i.e., a full-time practicing Florida-admitted lawyer who is a full-time salaried employee of the firm. The Committee minority feels that such proposed conduct is not proscribed by the Code so long as the Florida lawyer is responsible for all of the firm's Florida work and the firm's letterhead and other permissible listings, in accordance with DR 2-102(D), make clear as to any lawyers whose names appear on the letterhead stationery and who are not admitted in Florida that they are not admitted in Florida and so long as the letterhead is not otherwise misleading.

The minority shares the concern of the majority that the public not be misled. The minority feels that in order to avoid the letterhead being otherwise misleading, the arrangement must be brought fully within the provisions of DR 2-102(B) and EC 2-11 that "the name under which a lawyer conduct his practice [not]... mislead laymen concerning the identity, responsibility, and status of those practicing thereunder." If the Florida work is being done by the Florida-admitted lawyer, those dealing with the firm should not believe otherwise. Accordingly, the minority would include the proviso that the letterhead affirmatively reveal the responsibility and status in an appropriate fashion of the firm's Florida lawyer. For example: "Responsible for Florida practice: John Doe, associate." See Connecticut Bar Association Committee on Professional Ethics Informal Opinion dated December 1, 1976.

The Committee majority would concur that an arrangement involving a Florida office of an out-of-state firm should be fully within DR 2-102(B) and EC 2-11.

Additional Observations

Lying in the background of the consideration of many interstate partnership matters are questions of whether lawyers not admitted in Florida may thereby be engaged in the practice of Florida law, or create the appearance thereof, and whether the Florida office of an out-of-state firm might function simply or primarily as a “mail drop” for the firm's Florida clientele whose work then is done elsewhere. The Committee is advised that this is not fanciful speculation. The opportunity for, or appearance of, the foregoing improper use for the interstate partnership concept would seem to be greater when an out-of-state firm's Florida office is staffed by someone other than a full, bona fide partner who shares in the firm's profits/losses and who has management responsibility on a level comparable to that of the firm's out-of-state partners.

We cannot assume that a lawyer admitted in one state is, or should be considered to be, a lawyer for all purposes in another state. The Ethical Considerations of Canon 3 relative to assuring the public in Florida of the requisite responsibility and competence of lawyers by requiring that those who practice law for Florida citizens be subject to the requirements, regulations and disciplinary procedures imposed upon members of The Florida Bar should not be ignored. We are in no position to take issue with the view that, rightly or wrongly, observed ethical standards as among various jurisdictions may be the consequence of the social and professional environment in which lawyers practice. Of course, Florida civil and criminal law is not the same as that elsewhere; but also Florida's Code of Professional Responsibility is different in many significant respects from Codes elsewhere. See, e.g., Advisory Opinions 75-19, 76-51 [since withdrawn], and 77-25, which illustrate that the Florida Supreme Court did not simply “rubber stamp” a uniform Code of Professional Responsibility. Florida's Continuing Legal Education program—a means of assisting to assure compliance with Canon 6, entitled “A Lawyer Should Represent a Client Competently”—is extensive and expanding. Florida's disciplinary procedures for lawyers are important and the subject of constant critical evaluation and improvement. We do not believe it to be in the public interest simply to assume that such programs and procedures are alike in every jurisdiction.

With the foregoing considerations in mind, the Committee is in unanimous agreement that it would be in the public interest that the Florida Code of Professional Responsibility be strengthened, clarified, and made more specifically applicable with reference to conduct of the type proposed in these inquiries.

OPINION 74-48
December 26, 1974

It is permissible for an interstate partnership with an office in Florida to use its firm name in this state even though none of the lawyers listed in the firm name are admitted in Florida, but the letterhead should indicate which members of the firm are admitted in Florida.

CPR: DR 2-102(D)
Opinion: 65-15

Vice Chairman Daniels stated the opinion of the committee:

A member of The Florida Bar contemplates formation of an interstate partnership with a New York law firm and requests guidance regarding operations of the interstate partnership in Florida.

The formation of interstate partnerships is sanctioned by DR 2-102(D), which provides:

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 in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; *however, the same firm name may be used in each jurisdiction.*

In view of the underscored language above, the New York firm name may be used in Florida although none of the lawyers in such firm name are admitted in Florida. Former opinions to the contrary, such as 65-15 [since withdrawn], have been overruled by the subsequent amendment to the Code of Professional Responsibility underscored above. However, the Committee reaffirms the following language from former Opinion 65-15:

. . . it is not improper for a Florida lawyer to be a member of an interstate law firm which maintains offices both in Florida and elsewhere. The partnership, however, must be a full, bona fide partnership in which the profits and losses of the several offices are actually shared according to the terms of the partnership agreement. It is improper to engage in such an arrangement if its true effect is merely to create an association whereby legal matters are referred from one office to another and fees are shared only with reference to the particular matters so referred.

* * *

. . . all attorneys who are members or associates of such firm must be “amenable to professional discipline” at the place where the partner or associate is actually engaged in practice and the partner or associate must be a member of the bar authorized to practice

law at that place; and that the public and other lawyers must not in any way be misinformed or misled concerning the authority of any member of an interstate firm to practice in a particular jurisdiction. In the latter connection, if the name of a lawyer is listed on the letterhead of a Florida firm when that lawyer is not admitted to practice in Florida, then an affirmative statement must appear on the letterhead indicating that the lawyer is not authorized to practice in this state. Further, it is not proper to list the name of any attorney in a telephone directory, published and used in Florida, unless the attorney is admitted to practice in this state.

Under the contemplated interstate partnership, the partnership letterhead used in Florida will use the New York firm name at the top. On the left margin the letterhead will have a heading "Partners Admitted in Florida" and will thereafter list only the partners admitted in Florida. The Committee deems this an appropriate method to avoid misleading the public as it will indicate to the public that the lawyers in the firm name are not admitted in Florida. However, care should be exercised in the conduct of the firm's Florida practice to avoid any false impression that other partners are Florida lawyers.

OPINION 74-12
July 12, 1974

The “interstate partnership” concept does not encompass “branch offices” of an out-of-state law firm designed primarily to serve out-of-state clients who happen to spend time in Florida. A true interstate partnership requires a Florida partner practicing full-time lawyer in Florida.

CPR: DR 2-102(D)

Vice Chairman Daniels stated the opinion of the committee:

A New York law firm has written the Committee that it desires to establish “a small office within the State of Florida, primarily so that we might better serve those of our clients, of whom there are many, who spend substantial periods of time in your state during the course of any year.” Any partner or associate practicing in the contemplated Florida office would be admitted to practice in Florida. Inquiry is made as to whether, under DR 2-102(D), the rules relating to interstate partnerships would apply so as to permit the firm “to conduct such practice [in Florida] under our firm name, and to list our Florida office on our above letterhead.” All partners in the Florida office would be admitted to practice in both New York and Florida and would be partners in the New York firm. The firm's name does not contain the name of any Florida lawyer and its letterhead does not list any partners or associates of the firm.

Based on the facts presented, the Committee is of the opinion that the contemplated Florida office would not qualify as an interstate “partnership” within the meaning of DR 2-102(D). No lawyer admitted in Florida is presently practicing in Florida on a full-time basis. Consequently, there is no Florida practitioner who could form an “interstate partnership” with the New York firm.

The Committee believes that the “interstate partnership” concept does not encompass “branch offices” of an out-of-state law firm designed primarily to serve out-of-state clients who happen to spend time in Florida.

OPINION 70-55
January 12, 1971

A Florida attorney's name and address may be added to the stationery of an out-of-state lawyer, the intention being to "associate" the Florida lawyer for purposes of referral between the states. If the Florida lawyer is not licensed to practice in the second state, the letterhead must make clear the jurisdictional limits of the attorney.

CPR: DR 2-102(C)(D)

Opinion: 70-35

Chairman Massey stated the opinion of the committee:

A member of The Florida Bar has a relative who is practicing in another state. The Florida attorney is not admitted in such state, while the relative is not admitted in Florida. It is desired that the Florida attorney's name and address be added to the stationery of the out-of-state lawyer for use in the firm's name, the intention being to be "associated" to the end of handling referrals between the two states and for advisory services. Additionally, the Florida attorney is a member of a Florida firm which may not be involved in the proposed interstate relationship.

Interstate partnerships are authorized under the provisions of CPR DR 2-102(D). The inquiring attorney used the word "associated," but the import of the inquiry indicates there would be a partnership between him and his relative. Based upon this latter assumption, the proposed conduct is acceptable in Florida under DR 2-102(D). The rule, of course, requires that letterheads and listings make clear the jurisdictional limitations of those members and associates not licensed in all listed jurisdictions.

The crux of the issue here is whether the inquirer and his relative are in fact partners. Florida Opinion 70-35 [since withdrawn] held that it is inappropriate to list an attorney on the letterhead of a Florida firm when the attorney is not admitted to practice in Florida. The cited opinion did, in part, involve DR 2-102(C). For clarification of 70-35, it must be explained that the question of interstate partnership did not come into play in that decision.

The Committee would caution the inquirer to be aware of and comply with DR 2-102(C) and DR 2-102(B). Briefly, an attorney shall not hold himself out as having a partnership unless a partnership in fact exists and, further, an attorney shall not practice under a name that is misleading. Assuming there is a bona fide interstate law partnership proposed by the inquirer, there may exist a problem in the Florida lawyer practicing as a partner or member of a Florida law firm, which firm is not involved with the interstate partnership. Although the Committee is not asked nor does it propose to answer this latter matter, it would seem doubtful that an attorney would be able to legitimately be a full member of a Florida law firm and also at the same time an active partner of an interstate law firm.