

Nebraska Ethics Advisory Opinion for Lawyers
No. 69-5

A NON-RESIDENTIAL LAWYER, DULY ADMITTED TO PRACTICE IN NEBRASKA BUT RESIDING IN ANOTHER STATE WHERE HE ALSO MAINTAINS A LAW OFFICE, MAY PROPERLY ESTABLISH A LAW OFFICE IN NEBRASKA WITH ANOTHER LAWYER, DULY ADMITTED TO PRACTICE AND RESIDING IN NEBRASKA, PROVIDED THAT THEY ARE, IN FACT, PARTNERS, AND PROVIDED FURTHER, THAT THE NON-RESIDENT LAWYER CAN DILIGENTLY AND COMPETENTLY REPRESENT HIS CLIENTS AT THE NEBRASKA OFFICE.

A NON-RESIDENT LAWYER, WHO IS NOT ADMITTED TO THE PRACTICE OF LAW IN NEBRASKA BUT WHO IS ADMITTED TO THE PRACTICE OF LAW ELSEWHERE IN THE UNITED STATES, MAY BECOME A MEMBER OF A PARTNERSHIP INCLUDING THE NEBRASKA OFFICE, PROVIDED THAT HIS NAME IS NOT INCLUDED IN THE PARTNERSHIP NAME USED IN NEBRASKA AND PROVIDED FURTHER, THAT IT IS MADE CLEAR ON THE LETTERHEAD OF THE FIRM USED IN NEBRASKA, AND IN ALL PERMISSIBLE LISTINGS, THAT SUCH NON-RESIDENT LAWYER IS NOT ADMITTED TO THE PRACTICE OF LAW IN NEBRASKA.

CANONS INTERPRETED

Canon 33 (Canons of Professional Ethics):

*** Where partnerships are formed between lawyers who are not all admitted to practice in the Courts of the State, care should be taken to avoid any misleading name or representation which could create a false impression as to the professional position or privileges of the member not locally admitted. In the formation of partnerships for the practice of law, no person should be admitted or held out as a practitioner or member who is not a member of the legal profession, duly authorized to practice, and amenable to professional discipline. In the

selection and use of a firm name, no false, misleading, assumed or trade name should be used. ***"

Canon 1 (Code of Professional Responsibility):

"A lawyer should assist in maintaining the integrity and competence of the legal profession".

DR 1-102(A)(4):

"A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

DR 1-102(A)(4):

"A lawyer shall not engage in conduct that is prejudicial to the administration of justice".

Canon 2 (Code of Professional Responsibility):

"A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available".

EC 2-13: "In order to avoid the possibility of misleading persons with whom he deals, a lawyer should be scrupulous in the representation of his professional status. He should not hold himself out as being a partner or associate of a law firm if he is not one in fact, and thus should not hold himself out as a partner or associate if he only shares offices with another lawyer".

DR 2-102 (C): "A lawyer shall not hold himself out as having a partnership with one or more other lawyers unless they are in fact partners."

DR 2-102 (D): "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."

Canon 6 (Code of Professional Responsibility):

"A lawyer should represent a client competently".

EC 6-4: "**** In addition to being qualified to handle a particular matter, his obligation to his client requires him to prepare adequately for, and give appropriate attention to, his legal work."

DR 6-101 (3): "A lawyer shall not neglect a legal matter entrusted to him".

FACTUAL SITUATION

A Kansas City lawyer, a resident of, and domiciled in, that City, and with a law office there, is also licensed to practice law in Nebraska, and desires to open an office in Alliance, Nebraska. One of the firm members of the new office would be licensed to practice in Nebraska and would be permanently residing in Alliance. The Kansas City lawyers would spend only a portion of each month in Alliance. However, he would maintain a direct telephone line to the Kansas City office from and to Alliance, and a client calling the Alliance number could be switched to the Kansas City Office. No reference is made in this query as to whether or not these lawyers would be forming a partnership; the only reference here is to a "firm", whatever that may imply. The inquiry also involves the possibility of including a member of the "firm" in Kansas City, as a member of the "firm" in Alliance, although such member is not licensed to practice law in Nebraska.

QUESTIONS

The Kansas City lawyer, seeking to establish an office in Alliance poses three questions to the Advisory Committee for determination, they being the following, to-wit:

- (1) Under this arrangement, can my name be listed with the resident member's

name?

(2) Can I, in effect, maintain a law office in Alliance under this arrangement, while being a resident and domiciled here in Kansas City, Missouri?

(3) Can a member of our firm here in Kansas City, not licensed to practice in Nebraska, be listed as a member of the Alliance firm, if he is designated "Out of State Counsel"? In regard to this, I wish to point out that Missouri allows a Nebraska attorney to practice before its Courts without Missouri Counsel being present.

DISCUSSION

The Code of Professional Responsibility states as follows:

(1) DR 2-102 (C): "A lawyer shall not hold himself out as having a partnership with one or more other lawyers unless they are in fact partners".

(To the same effect: Informal Decision No. 865 - 9/23/65).

DR 2-102 (D): "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."

Drinker, in his Legal Ethics, on page 230, states as follows:

"Canon 33 clearly implies that partnerships between lawyers admitted in different

States are permissible, provided that there be no misleading name or misrepresentation of local status; and the same would apply to associates; and hence justify their inclusion on the firm's letterhead, with a clear statement that the outside partners are not locally admitted. *** The name of a lawyer not admitted locally may not be included in the firm name (even though he may properly be a member of the firm) despite a statement on the letterhead, shingle, and law list that he is admitted only in the foreign state, since the firm name appearing elsewhere without explanation would imply that all the members in the name were authorized to practice locally."

Drinker further states, on page 205 as follows:

"The partnership name may not include that of one not locally admitted, despite explanatory statements in the letterhead, shingle, etc., since the name, used where no such explanation accompanied it, would imply that all named partners were locally admitted. While the provision in Canon 33, above referred to, would seem also to justify an association of a lawyer of another state, where properly explained, it would not clearly authorize a partnership or association with a foreign lawyer not entitled to practice in any jurisdiction of the United States." Also, "Canon 33 clearly implies the propriety of partnerships between lawyers admitted only in different states, but provides that care be taken to avoid any misleading name or representation which would create a false impression as to the professional position or privilege of the member not locally admitted."

Informal Decision No. C 702 (2/24/64) states that, "If you follow the procedure, as outlined in your letter, you may ethically have offices in several states." The "letter"

stated: "All letterhead, announcements, listings in legal directories, and so forth, appropriate indication would be made in each case as to the jurisdiction in which any lawyer, whose name appears, is not admitted to practice."

Informal Decision No. 555 (7/23/62) states that, "This Committee has stated on numerous occasions that it is improper for a group of lawyers to hold themselves out as a partnership when no partnership relation in fact exists. See Formal Opinions 106, 115, 126 and 277. Formal opinion 277, in referring to Canon 33 which provides for partnerships among lawyers, states that there must be a true partnership involving a joint and several responsibility."

Further and more intensive research confirms the conclusion that some inconsistencies seem to exist in the various rulings made in this field, but it appears that:

- (1) A true partnership must in fact exist.
- (2) All references to a lawyer from another state, who is not licensed to practice in Nebraska, must state, "John Doe, not admitted to practice law in Nebraska," or language substantially similar to it. "Out of State Counsel" or "Of Counsel" would not suffice.
- (3) Because of the difficulties inherent in the situation, only the lawyers admitted to practice in Nebraska, should be included in the firm name. Others, admitted to practice elsewhere in the United States, may properly be members of the firm but should not be included in the firm name. This is because the firm name may be used or referred to on numerous occasions without the explanatory limitations otherwise shown on the letterhead.

Being a resident of, and domiciled in, Kansas City with only periodic visits to the law office in Nebraska and

thereby expecting "to practice law" over the telephone, could pose a disciplinary problem, also.

The Code of Professional Responsibility bears indirectly on this problem:

Canon 1 - A Lawyer Shall Assist in Maintaining The Integrity and Competence of the Legal Profession.

DR 1-102 (5) - A lawyer shall not engage in conduct that is prejudicial to the administration of justice.

Canon 6 - A Lawyer Should Represent A Client Competently.

DR 6-101 (A) (3) - A lawyer shall not engage in conduct that is prejudicial to the administration of justice.

The Code will require diligent attention by the lawyer to the matters involving his clients. It will be the responsibility of the Kansas City lawyer to determine whether or not he can diligently and competently practice law, more than 600 miles from his residence and principal office, by telephone and by making only periodic visits to the law office in Alliance.

CONCLUSION

Hence, it would appear that the proper answers to the questions submitted, would be as follows, to-wit:

Question No. 1: It would be proper to list the name of the Kansas City lawyer, duly admitted to the practice of law in Nebraska, with the name of the resident lawyer at Alliance, provided that a partnership between them, in fact, exists.

Question No. 2: Under these circumstances, the Kansas City lawyer could maintain an office in Alliance, provided that he does not neglect his clients at Alliance, both as to office matters and as to Court appearances.

Question No. 3: Respecting the lawyer in Kansas City, who is not admitted to practice in Nebraska, he

could become a member of the partnership to include the lawyer in Alliance and his partner from Kansas City, provided that his name does not appear in the partnership name and provided further, that it is stated on the letterhead and elsewhere, whenever and wherever possible, that he is NOT admitted to practice law in Nebraska. It would not suffice, simply to state that he is "Out of State Counsel".

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