NEW YORK STATE BAR ASSOCIATION

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COMMITTEE ON PROFESSIONAL ETHICS

Opinion 646 - 6/8/93 (49-92)

TOPIC: Employment by foreign legal consultant; partnership with foreign lawyer

DIGEST: Subject to any applicable legal restrictions, a member of the New York State Bar may serve under the employ of a Japanese legal consultant; subject to any applicable legal restrictions, a member of the New York State Bar may enter into a partnership with a Japanese lawyer if the New York lawyer confirms that the partnership will not compromise the lawyer's ability to uphold ethical standards.

CODE: EC 1-8; DR 2-102(D), 3-1O1(A), 3-103(A).

QUESTIONS

1. May a member of the New York State Bar serve as the employee of a Japanese legal consultant?

2. May a member of the New York State Bar enter into a partnership with a Japanese lawyer?

OPINION

With respect to the first question, we conclude that a member of the New York State Bar may serve as an employee of a legal consultant who is duly licensed under the Court of Appeals rules as long as the legal consultant acts within the scope of his or her authority under those rules and any other applicable law. The licensing of "legal consultants" in this State is governed by the provisions of Part 521 of the Rules of the New York Court of Appeals. Foreign attorneys and counsellors at law who are licensed to practice as legal consultants under these rules may render legal services in New York State subject to various limitations, including those set forth in §521.3. Among other things, §521.3(e) provides that a legal consultant shall not "render professional legal advice on the law of this State or of the United States of America ...,

except on the basis of advice from a person duly qualified and entitled (other than by virtue of having been licensed under this Part) to render professional legal advice in this State on such law." Although DR 3-101(A) of the New York State Code of Professional Responsibility provides that "[a] lawyer shall not aid a non-lawyer in the unauthorized practice of law," the rendering of legal services by a legal consultant as authorized by the Court of Appeals rules is not the "unauthorized" practice of law. Therefore, a New York lawyer may, as an employee, provide aid to the legal consultant. Indeed, §521.3(e), quoted above, specifically contemplates that, at times, a New York lawyer will provide advice on New York or U.S. law on the basis of which a legal consultant will render advice to others. Nothing in the Code would prevent a New York lawyer from providing such advice in the capacity as an employee of, rather than as an independent consultant to, the legal consultant.

On the other hand, if the legal consultant were to render legal services that the legal consultant was not authorized to render, then a New York lawyer would be forbidden by DR 3-101(A) from providing aid, either as an employee or in any other capacity. The precise extent to which a legal consultant may render legal services in New York State is a question calling for an interpretation of the Rules of the Court of Appeals and other applicable law. It is beyond this Committee's jurisdiction to consider such questions of law.

With respect to the second question, we conclude that a New York lawyer may enter into a partnership with a Japanese lawyer ("bengoshi")[1] insofar as the proposed arrangement is in conformity with the substantive law of New York as well as the ethical codes and laws of Japan. We previously addressed the propriety of a partnership between a New York lawyer and lawyers of a foreign country in N.Y. State 542 (1982). Specifically, we considered whether a New York lawyer practicing in this state may serve as partner of a British firm of solicitors, and we concluded that the New York lawyer may do so. We noted that although DR 3-103(A) of the Code of Professional Responsibility provides that "[a] lawyer shall not form a partnership with a non-lawyer," DR 2-102(D) recognizes that a partnership may be formed "between or among lawyers licensed in different jurisdictions." We found that the reference in DR 2-102(D) to "lawyers licensed in other jurisdictions" would include not only lawyers licensed to practice in states other than New York, but also lawyers licensed in the United Kingdom.

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1 There are various classes of legal professionals who are licensed in Japan to perform different types of work that lawyers perform in the United States. "Bengoshi" are the only legal professionals who may try contested cases in Japanese court. Other licensed professionals in Japan draft and register legal documents, engage in patent and tax practice, and perform other legal work. In addition, various work performed by lawyers in the United States may be undertaken in Japan by individuals who are not members of any licensed legal profession. *See generally* Richard S. Miller, "Apples vs. Persimmons – Let's Stop Drawing Inappropriate Comparisons Between the Legal Professions in Japan and the United States," 17 V.U.W.L. Rev. 201, 202-07 (1987).

This opinion only addresses the question of whether a New York lawyer may enter into a partnership with "bengoshi." It does not address an arrangement with other Japanese legal professionals.

Our opinion in N.Y. State 542 did not hold that an individual licensed to practice law in a foreign jurisdiction is, by virtue of that fact alone, one with whom a New York lawyer may properly form a partnership. Rather, our opinion addressed only lawyers licensed in the United Kingdom. We explained: "The general similarity of our educational requirements for admission to practice, as well as the essential compatibility of our standards of professional conduct and discipline, have inevitably led us to consider such persons beyond the traditional proscription against lay partnerships." *Id.; accord* New York City 81-72 ("Whether a foreign lawyer is a lawyer under the Code depends on such factual issues as whether the training of and ethical standards applicable to the foreign lawyer are comparable to those for an American lawyer.").

Inquiry into the educational requirements and professional standards for lawyers in the foreign jurisdiction are significant for the following reason: If the foreign lawyer's educational training is of insufficient rigor or the foreign lawyer is subject to professional standards that are vastly incompatible with our own, the New York lawyer's partnership with the lawyer licensed in a foreign jurisdiction might compromise the New York lawyer's ability to uphold the standards of professional conduct applicable in this state. Of particular concern is the New York lawyer's duty of confidentiality under DR 4-101. A New York lawyer's sharing of client confidences with a foreign partner could result in inappropriate disclosures or misuse of those confidences if the foreign partner lacked adequate understanding of, or respect for, this ethical obligation.

There is no doubt that the legal systems of Japan and the United States greatly differ in respects that would be quite significant in certain contexts. Nevertheless, this Committee's necessarily limited inquiry into the practice of law in Japan discloses no reason why a New York lawyer should be barred by the Code from entering into a partnership with Japanese lawyers, insofar as it is permissible to do so under the laws of the respective jurisdictions. The educational requirements for admission to practice law appear to be no less rigorous in Japan than in the United States. *See generally* Edward I. Chen, "The Legal Training and Research Institute of Japan," 22 Tol. L. Rev. 975 (1991); 1 Japan Business Law Guide at ¶¶ 7-100-1-140 (CCH Int'l 1988). Moreover, the standards of professional conduct and discipline in Japan appear to be sufficiently similar in relevant respects. Japanese lawyers are subject to professional discipline for violating ethical standards adopted by the Japanese Federation of Bar Associations. *See* 2 Japan Business Law Guide at ¶ 80-140; *see also* Sherill A. Leonard, "Attorney Ethics and the Size of the Japanese Bar," *Japan Q.* 86, 90 (Jan.-Mar. 1992). The attorney-client privilege, as well as a duty to avoid certain conflicts-of-interests, are established in Japan by statute. *See* 2 Japan Business Law Guide, at ¶¶ 90-140 (CCH Int'l 1988). We are unaware of anything in the training of Japanese lawyers or in the standards of professional conduct that apply to them that would lead us to conclude that a New York lawyer's partnership with a Japanese lawyer would be likely to compromise the New York lawyer's ability to uphold the ethical standards.

Given that this Committee's conclusion rests on limited familiarity with Japanese legal practice, however, a New York lawyer proposing to enter into a partnership with a Japanese lawyer should undertake an independent inquiry to confirm that the partnership will not compromise the New York lawyer's ability to uphold ethical

standards. Moreover, the New York lawyer who enters into a partnership with lawyers licensed in Japan or any other foreign country has an obligation to ensure that participation in the law partnership does not compromise the lawyer's ability to abide by the ethical standards of this State, including the standards governing attorney-client confidentiality. *Cf.* EC 1-8 ("A law firm should adopt measures giving reasonable assurance that all lawyers in the firm conform to the Disciplinary Rules and that the conduct of non-lawyers employed by the firm is compatible with the professional obligations of the lawyers in the firm.").

CONCLUSION

For the reasons stated above and subject to the qualifications noted above, both questions are answered in the affirmative.