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COMMITTEE ON PROFESSIONAL ETHICS

Opinion 911 (3/14/12)

Topic: Sharing legal fees and undertaking employment with an out-of-state entity that includes non-lawyer owners and managers

Digest: A New York lawyer may not practice law principally in New York as an employee of an out-of-state entity that has non-lawyer owners or managers.

Rules: 5.4(a) & (d); 8.5(b)

QUESTION

[1] Lawyers admitted to practice in New York ask whether they may enter into a business relationship with a United Kingdom ("UK") entity under the following circumstances. The UK entity would be formed as an Alternative Business Structure under the UK's Legal Services Act, which permits entities with non-lawyer supervisors and owners to render legal services. The entity would include UK non-lawyers in supervisory and ownership positions, raise capital in private equity financing, and have a professional management team. The New York lawyers would establish a New York office, where they would represent New York clients. They would be employees of the UK entity and would hold stock options and, in some cases, vested shares in the UK entity. Lawyers in the New York office would adhere to confidentiality rules and would not share confidences with UK non-lawyer managers. The entity would adhere to UK rules as well.

OPINION

[2] The inquiry is governed by Rule 5.4(a), which forbids a lawyer from sharing fees with a non-lawyer, and Rule 5.4(d), which forbids a lawyer from practicing law for profit with an entity that includes a non-lawyer owner or member. These provisions would clearly be violated by the proposed arrangement.

[3] As we discussed in N.Y. State 889 (2011), these provisions would not necessarily apply to New York-admitted lawyers who principally practice law in another jurisdiction in which they are also licensed to practice. Rule 8.5(b) provides that the New York Rules govern the conduct of lawyers who are licensed only in New York, but that lawyers admitted in a second jurisdiction are generally subject to the rules of the particular jurisdiction in which they principally practice. Therefore, we concluded, a lawyer admitted in both New York and the District of Columbia but who maintains an office and principally practices in the District of Columbia would be governed by the more liberal provisions of the District of Columbia, even if the lawyer undertakes occasional litigation in New York.

[4] Under the proposed arrangement, in contrast, New York's Rules, including Rule 5.4, would govern the propriety of the arrangement with the UK entity. Even if the lawyers in

question are also licensed in the UK, the predominant effect of their conduct, in practicing law from a New York office on behalf of New York clients, would be in New York.

CONCLUSION

[5] A New York lawyer may not practice law principally in New York as an employee of an out-of-state entity that has non-lawyer owners or managers.

(3-12)