

ETHICS OPINION

RO-02-02

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QUESTION:

May an Alabama law firm enter into an affiliation agreement with a foreign law firm, where there will be no legal commitments, no sharing of revenues, and neither affiliate would engage in the practice of law outside of the jurisdictions in which they are licensed?

ANSWER:

The Disciplinary Commission of the Alabama State Bar is of the opinion that the Alabama Rules of Professional Conduct do not prohibit Alabama lawyers from forming a partnership with foreign attorneys, or practicing with foreign attorneys in the form of a professional corporation or association authorized to practice law for a profit. For the purposes of this opinion, the foreign lawyers must be members of a recognized legal profession in the foreign jurisdiction. Further, your arrangement between the Alabama lawyers and the foreign lawyers must be in compliance with the law of Alabama, as well as the law of the foreign jurisdiction where the foreign lawyer practices.

DISCUSSION:

The Alabama Rules of Professional Conduct contain no specific prohibition against an Alabama lawyer forming a partnership with, practicing with or in the

form of a professional corporation or association, a foreign lawyer. However, Rule 5.4(a) prohibits an Alabama lawyer from sharing legal fees with a nonlawyer. Rule 5.4(b) and (d) prohibit Alabama lawyers from forming a partnership with, practicing with or in the form of a professional corporation or association, any individual not authorized to practice law in the State of Alabama. Specifically, the above-cited Rules provisions are as follows:

**"Rule 5.4 Professional Independence
of A Lawyer**

- (a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:**
- (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to the one or more specified persons;**
 - (2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer; and**
 - (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit sharing arrangement.**

- (b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

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- (d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
- (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
 - (2) a nonlawyer is a corporate director or officer thereof; or
 - (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.”

Additionally, Rule 5.5, which prohibits a lawyer from assisting a person who is not a member of the Bar in the performance of activity that constitutes the unauthorized practice of law, does not address the specific situation involving an affiliation between a foreign lawyer and an Alabama lawyer for the practice of law. As the Comment to Rule 5.5 points out, the definition of the practice of law is established by law and will vary from one jurisdiction to another. The purpose behind the prohibition on unauthorized practice of law as set forth in Rule 5.5, as the Comment points out, is to protect the public against rendition of legal services by unqualified persons.

The provisions of Rule 5.4, quoted above, have as their primary purpose ensuring that Alabama lawyers, in representing their clients, exercise independent professional judgment and are not subject to control or supervision by nonlawyers. An application of this Rule to your inquiry leads to the conclusion that a member of the legal profession of a foreign country will be considered a “nonlawyer” under Rule 5.4, and would thus be prohibited from forming a partnership with, associated in the practice of law in any other way with an Alabama lawyer.

The Disciplinary Commission is of the opinion, however, that lawyers who are members of a recognized legal profession in a foreign jurisdiction would not be “nonlawyers” within the meaning of Rule 5.4, and, therefore, an affiliation, formation of a partnership, or practicing in the form of a professional corporation or association with such foreign lawyers, would not violate that Rule.

Whether a prospective member of an Alabama law firm is a member of a "recognized legal profession" requires a factual determination taking into consideration the jurisdiction's legal structure as well as the nature and extent of legal services customarily performed by the prospective member in his or her jurisdiction. In most instances, a person who is specially trained to provide legal advice concerning the laws of the foreign jurisdiction and is licensed by the foreign jurisdiction to represent clients in the legal and judicial system of the jurisdiction,

would qualify as a member of a recognized legal profession in the foreign jurisdiction.

However, the Disciplinary Commission is aware that in some foreign jurisdictions an individual who is licensed as a *notario* or Notary Public is permitted to provide legal services which only a duly licensed lawyer could provide in Alabama. An individual who is licensed only as a Notary Public in a foreign jurisdiction would not be considered, in the opinion of the Disciplinary Commission, a member of a recognized legal profession and an Alabama law firm should not enter into an arrangement with such an individual to provide legal services.

Before accepting a foreign lawyer as a member, an Alabama law firm must take all reasonable steps to ensure that the foreign lawyer is a member of a recognized legal profession authorized to engage in the practice of law in the foreign jurisdiction and that the arrangement complies with the laws of Alabama and the laws of the jurisdiction where the foreign lawyer practices.

This opinion is not intended to restrict or impose additional requirements on the formation of business entity partnerships between Alabama lawyers and lawyers licensed in other states. A lawyer who is duly licensed to practice law in any one of the United States or its territories is clearly a member of a recognized legal profession within the meaning of this opinion, and the existence of such partnerships is acknowledged in Rule 7.5 of the Alabama Rules of Professional Conduct.

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This opinion is consistent with Formal Opinion 01-423 of the American Bar Association Committee on Ethics and Professional Responsibility and some of the language herein is derived from that opinion.

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