

# NY Associate May Manage NY Office for NJ Partner

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In Ethics Opinion 814, issued May 15, 2007, the NYSBA considered the following facts:

A law firm with an office in New Jersey supervised by a partner of the firm wishes to open an office in New York. The partner is not admitted in New York. The office will be staffed and managed by a lawyer admitted in New York who will be paid a salary, who will not be a partner of the firm, and who "will not share in the overall profits, liabilities and professional responsibilities of the law firm." He will, however, be listed as "associate" or "of counsel" on the firm's letterhead and promotional material. The New York office will practice in the name of the New Jersey firm.

The Opinion resolved the following questions:

1. May an out-of-state law firm open an office in New York without a partner in residence? The answer: Yes.
2. May an out-of-state law firm associate with or employ a lawyer admitted in New York? The answer: Yes
3. May a New York lawyer form a partnership with an out of- state lawyer not admitted in New York. The answer: Yes. (see, NYSBA Op. 801 (2006); and, also, Roy Simon, *Recent Ethics Opinions on the Unauthorized Practice of Law*, Page 1, NYPRR, this issue.)

In reaching these answers, the Opinion construed DR 1-104(A) and (C). These Sections impose the following requirements on law firms:

(A) to make reasonable efforts to ensure that lawyers in the firm conform to the disciplinary rules; and

(C) to supervise, as appropriate, the work of "partners, associates and nonlawyers who work at the firm."

In NYSBA Op. 762 (2003), the Committee noted that the New York Code did not define which law firms are subject to New York's disciplinary authority. However, it concluded that those Rules which were specifically designed to apply to law firms would apply to all firms with an office in New York having at least one New York lawyer as an affiliate of the firm. Therefore, the supervisory rules in DR 1-104, which are specifically addressed to law firms, apply to these facts. The Opinion concluded with a list of systems enabling New York law firms to comply with the disciplinary rules:

To discharge this duty, the firm may consider establishing procedures (i) to ensure that lawyers reach agreement with clients on fees and provide accurate bills (EC 2-19; DR 2-106); (ii) to educate lawyers and nonlawyers about the importance of maintaining client confidences and secrets, and systems to

assist with the maintenance of client confidences (DR 4-101); (iii) to keep records of prior engagements and detect conflicts of interest (DR 5-105(E)); (iv) to oversee work handled by any New York attorney and ensure that the lawyer handling the matter is competent (DR 6-101); (v) to allow non-partners to raise concerns about ethical conduct (EC 1-8); (vi) to segregate client funds and maintain appropriate records (DR 9-102); and (vii) to provide continuing legal education to attorneys (EC 1-8).