

**THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 617**

May 2012

QUESTION PRESENTED

Under the Texas Disciplinary Rules of Professional Conduct may a lawyer, who is licensed to practice law in Texas and in North Carolina, practice law in North Carolina, without soliciting or representing persons in Texas, under a law firm name that is not permitted under the Texas Disciplinary Rules but that is permitted under the applicable rules of North Carolina law governing the practice of law in North Carolina?

STATEMENT OF FACTS

A lawyer is licensed to practice law under the laws of both Texas and North Carolina. The lawyer has in the past practiced law in Texas but he now lives and practices law in a city ("CityX") in North Carolina. The lawyer practices law in North Carolina in a law firm that proposes to use the trade name "CityX Law Group" in addition to the law firm's actual name, which is based on the names of lawyers in the firm. The use of the trade name "CityX Law Group" is in accordance with applicable rules governing the practice of law in North Carolina. The lawyer and the law firm do not currently practice in Texas and do not propose to solicit clients located in Texas.

DISCUSSION

Rule 7.01 of the Texas Disciplinary Rules of Professional Conduct provides in relevant part:

“(a) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm

. . . .

(e) A lawyer shall not advertise in the public media or seek professional employment by any communication under a trade or fictitious name”

Under Rule 7.01, a Texas lawyer is prohibited from practicing or advertising in Texas under a trade name such as "CityX Law Group." This prohibition in Texas has been confirmed by both court decisions and Professional Ethics Committee Opinions. See *Rodgers v. Commission for Lawyer Discipline*, 151 S.W.3d 602, 610-11 (Tex. App.-Fort Worth 2004, pet. denied), *Commission for Lawyer Discipline v. C.R.*, 54 S.W.3d 506, 515-16 (Tex. App.-Fort

Worth 2001, pet. denied), Professional Ethics Committee Opinion 529 (April 1999), and Professional Ethics Committee Opinion 398 (November 1978).

The only issue here is whether the prohibition on trade names set forth in Rule 7.01 of the Texas Disciplinary Rules applies to a lawyer licensed to practice law in Texas and in North Carolina who is not currently practicing law in Texas but is practicing law in North Carolina as authorized under the laws of North Carolina. For purposes of this opinion the Committee assumes that applicable North Carolina law permits a North Carolina lawyer to practice under a trade name such as “CityX Law Group” and that the lawyer and his law firm have complied with all applicable requirements of North Carolina law to practice under that trade name in North Carolina.

Rule 8.05 of the Texas Disciplinary Rules provides in pertinent part:

“(a) A lawyer is subject to the disciplinary authority of this state, if admitted to practice in this state or if specially admitted by a court of this state for a particular proceeding. In addition to being answerable for his or her conduct occurring in this state, any such lawyer also may be disciplined here for conduct occurring in another jurisdiction or resulting in lawyer discipline in another jurisdiction, if it is professional misconduct under Rule 8.04.”

Comments 3 and 4 to Rule 8.05, provide in pertinent part:

“3. If the rules of professional conduct of this state and . . . [another] jurisdiction differ, principles of conflict of laws may apply. Similar problems can arise when a lawyer is licensed to practice in more than one jurisdiction and these jurisdictions impose conflicting obligations. . . . In such cases, this state will not impose discipline for conduct arising in connection with the practice of law in another jurisdiction or resulting in lawyer discipline in another jurisdiction unless that conduct constitutes professional misconduct under Rule 8.04.

4. Normally, discipline will not be imposed in this state for conduct occurring solely in another jurisdiction or judicial system and authorized by the rules of professional conduct applicable thereto, even if that conduct would violate these Rules.”

Under Rule 8.05 a lawyer licensed to practice law in Texas can be disciplined in Texas for conduct occurring in another state if that conduct violates any of the Texas Disciplinary Rules of Professional Conduct. Rule 8.05(a) permits discipline for any professional misconduct under Rule 8.04, and Rule 8.04(a)(1) provides that a lawyer shall not “violate these rules” Thus, under a literal reading of these Rules (and without regard to the indications in the Comments on when discipline will not normally be imposed), any violation of the Rules could in theory be the basis for discipline of a Texas lawyer even if the conduct in question occurs in another state where the lawyer is also licensed to practice, is permitted by the applicable rules of such other state, and has no effect in Texas.

However, Comment 3 to Rule 8.05, quoted above, recognizes that, when the professional conduct rules of Texas and another state differ, the question of which rules will apply may have to be determined utilizing principles of conflict of laws. The Supreme Court of Texas has ruled that Texas courts should decide conflict of laws issues by using the “most significant relationship” test as set forth in the Restatement (Second) of Conflict of Laws (American Law Institute 1971) (particularly sections 6 and 145 of this Restatement). See *Torrington Co. v. Stutzman*, 46 S.W.3d 829, 848 (Tex. 2000), *Hughes Wood Products, Inc. v. Wagner*, 18 S.W.3d 202, 205 (Tex. 2000), and *Duncan v. Cessna Aircraft Co.*, 665 S.W.2d 414, 420-21 (Tex. 1984). Although this Committee does not have authority to address conflict of laws issues generally, the Committee believes that it does have authority to look to settled Texas principles of conflict of laws in the determination of whether a provision of the Texas Disciplinary Rules of Professional Conduct has application to particular conduct of a Texas lawyer that is also governed by the professional conduct rules of another state.

Applying the “most significant relationship” standard of Texas law to the circumstances here considered, the Committee concludes that the state with the most significant relationship to the lawyer’s practice and the names used in that practice is unquestionably the state of North Carolina and that there appears to be no significant relationship between Texas and the name of the law firm under which the lawyer practices law wholly outside of Texas in compliance with applicable North Carolina law. In the circumstances presented, while the relationship of the lawyer’s current law practice to North Carolina is clear and substantial, the only relationship to Texas is that the lawyer is licensed to practice law in Texas as well as in North Carolina and has practiced law in Texas in the past. In addition to the fact that the state with the most significant relationship is North Carolina rather than Texas, it is clear that there is no discernible adverse impact on Texas interests when a lawyer licensed in Texas and North Carolina does not comply with the Texas rule on law firm names but does comply with North Carolina’s rules in a law practice in North Carolina that does not touch Texas. Such conduct outside of Texas does not in any way call into question the lawyer’s basic fitness, on a moral or other basis, to practice law in Texas should he later choose to do so under a firm name that is permitted under the Texas Disciplinary Rules. Accordingly it is the opinion of the Committee that, based on settled Texas principles of conflict of laws and in view of the lack of any significant interest of Texas in the circumstances considered, the prohibition against use of trade names set forth in Rule 7.01 of the Texas Disciplinary Rules does not apply to the use exclusively outside of Texas of the name “CityX Law Group” for a law practice conducted in North Carolina in full compliance with applicable North Carolina law.

CONCLUSION

A lawyer licensed to practice law in Texas and in North Carolina does not violate the Texas Disciplinary Rules of Professional Conduct if he practices law in North Carolina, without soliciting or representing persons in Texas, under a law firm name that is not permitted under the Texas Disciplinary Rules but that is permitted under the applicable rules of North Carolina law governing the practice of law in North Carolina.