THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 686
January 2020

QUESTION PRESENTED

May a Texas lawyer practice law as an associate or other non-partner firm lawyer—and the only lawyer in the Texas office—of a law firm whose partners are only licensed to practice law outside of Texas?

STATEMENT OF FACTS

Smith Jones P.C. is a law firm organized as a professional corporation in California (the "Firm"). The Firm has multiple offices in California but does not yet have an office in Texas. None of the Firm's lawyers are licensed to practice law in Texas. All of the Firm's partners, including named partners Smith and Jones, are licensed in California alone.

The Firm intends to open an office in Texas to serve existing clients in California and Texas. The Firm has offered a position to a Texas lawyer to serve as an associate attorney in its soon-to-be-opened Texas office. At least initially, the Texas associate will be the only lawyer in that office and will be responsible for any legal services rendered under Texas law.

DISCUSSION

The Committee has previously addressed similar questions about whether out-of-state law firms may open offices in Texas. *See, e.g.*, Professional Ethics Committee Opinion 400 (July 1981) (applying former rules to question of whether out-of-state law firm may use same firm name in Texas); Opinion 319 (October 1966) (same). In these opinions, the Committee determined that an out-of-state law firm may operate a Texas office under the name it uses in another state provided that: (1) the firm has a resident partner licensed in Texas, and (2) all representations of the firm made to the public identify the states in which the members of the firm are licensed to practice. *See id.*

The question here is whether the result is the same under the current Texas Disciplinary Rules of Professional Conduct where the law firm's only lawyer resident in Texas is not a partner, but, rather, is an associate or other non-partner firm lawyer. The Committee concludes the answer is yes and that the Firm may open an office in Texas under the circumstances described above. For purposes of this opinion, the term "partner" is broader than the definition of partner in the Terminology section of the Rules and includes not only a partner or shareholder but also a lawyer who is a member of a PLLC or a principal in a firm, or who holds another similar position in the firm..

Rule 7.01(b) provides that "[a] firm with offices in more than one jurisdiction may use the same name in each jurisdiction," so long as the jurisdictional limitations of its

lawyers are noted in public representations. Comment 2 to Rule 7.01 notes that "[t]he practice of law firms having offices in more than one state is commonplace." Rule 7.01(b) says nothing about the required organizational structure of an out-of-state firm's office in Texas. *Cf.* Opinion 618 (June 2012) ("The Texas Disciplinary Rules of Professional Conduct do not prescribe specific forms of organization for law firms."). Thus, the Rules do not expressly prohibit an out-of-state firm from operating in Texas when the only resident lawyer is an associate.

To the extent the Committee's earlier opinions appeared to require a resident partner in Texas, the Committee believes that such language arose from the fact patterns presented; the opinions did not address whether the result would have been different if the resident lawyer had been an associate. Indeed, Opinion 319 speaks in more lenient terms, concluding at one point that the firm need only have a "resident Texas licensed *lawyer*" (emphasis added). Furthermore, the predecessors to Rule 7.01(b) directly addressed the "formation of partnerships for the practice of law," which may also explain the use of the term "resident partner" in the earlier opinions. *See* Opinion 400 (interpreting former DR 2-102(D)); Opinion 319 (interpreting former Canon 30). Rule 7.01(b) says nothing about the formation of "partnerships." Instead, Rule 7.01(b) speaks only in terms of what is required for a "firm with offices in more than one jurisdiction."

Given these distinctions, the Committee finds that the underlying rationale of its earlier opinions can be satisfied even if the only resident Texas lawyer is an associate or other non-partner firm lawyer. *See* Opinion 577 (March 2007) (providing factors for determining when a lawyer is a "firm lawyer" reasonably considered to be "in" a law firm).

The primary concern in Opinions 319 and 400 was to ensure that an out-of-state firm operating in Texas would respect and uphold the ethical rules that govern Texas attorneys. The Committee thus concluded that the out-of-state firm should maintain a resident agent for service of process and have a resident partner in Texas to "insure the same degree of commitment and obligation to the citizens of Texas . . . that is demanded of resident practitioners" and to create "an accountability to the general public by such firms." Opinion 400.

The Committee concludes that it is unnecessary for the resident Texas lawyer to be a partner in order to create this kind of accountability, provided, however, that the associate or other non-partner lawyer: (1) qualifies as a "firm lawyer" reasonably considered to be "in" the law firm under the factors discussed in Opinion 577; and (2) is given the responsibility and authority to make decisions about the firm's practice of law in Texas. These requirements, along with the designation of a resident agent for service of process, will ensure that there is a Texas-licensed lawyer on whom the public, clients, and judicial authorities may rely for compliance with the ethical standards governing the practice of law in Texas.

This conclusion is consistent with guidance from other jurisdictions. *See, e.g.*, Arizona Ethics Opinion 96-08 (Sept. 1996) (Arizona lawyer may be hired as an associate to operate Arizona office of out-of-state firm if associate is "fully responsible for the Arizona practice" and will therefore be "accountable to the public, disciplinary, judicial and licensing authorities"); Rhode Island Ethics Opinion 90-20 (May 1990) (Rhode Island lawyer may staff Rhode Island office of out-of-state firm if lawyer is either a partner or associate of the firm); *see also* New Jersey Ethics Opinion 550 (January 1985) (concluding that New Jersey rules "set forth no requirements that the New Jersey attorney, through whom an out-of-state firm opens a New Jersey office, must have the status of partner in the out-of-state firm").

This conclusion is also consistent with comment 5 to Rule 5.05, which states: "In furtherance of the public interest, lawyers should discourage regulations that unreasonably impose territorial limitations upon the right of a lawyer to handle the legal affairs of a client or upon the opportunity of a client to obtain the services of a lawyer of his or her choice." The Committee believes the requirements discussed above strike the appropriate balance in this regard.

CONCLUSION

A Texas lawyer may practice law as an associate or other non-partner firm lawyer—and the only lawyer in the Texas office—of an out-of-state law firm, provided that the associate or other non-partner lawyer: (1) qualifies as a "firm lawyer" reasonably considered to be "in" the law firm under the factors discussed in Opinion 577; and (2) is given the responsibility and authority to make decisions about the firm's practice of law in Texas. The out-of-state law firm should also have a resident agent for service of process in Texas.