STATE BAR OF NEVADA
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion No. 20
February 24, 1995

QUESTION - May an attorney who is licensed to practice law in States A and B but lives in Nevada, where the attorney is not licensed and does not practice law, have as his letter:

John Doe
Attorney And Counselor At Law
123 Any Street
Anyville, Nevada 89523
ADMITTED TO PRACTICE:
State A
State B

ANSWER - Not unless the letterhead is modified to disclose that the attorney is not licensed to practice in Nevada.

AUTHORITIES RELIED ON

Supreme Court Rule 199, Rule 7.5(b) of the A.B.A. Model Rules of Professional Conduct, Pioneer Title v. State Bar, 74 Nev. 186, 189 (1958), N.Y. County Lawyers Assn'n, Comm. on Professional Ethics, Op. 683 (1990), In Re Waters, 84 Nev. 712 (1968)

DISCUSSION

Subject to certain limited exceptions relating to deceased or retired members, Supreme Court Rule 199 provides that it shall be unprofessional conduct to use a name for a law firm unless every person whose name is used is a member in good standing of this state's bar. The Committee takes no position as to whether this rule would stand constitutional challenge1, but its purpose is nonetheless laudatory: to

1In Fact, SCR 199 is at variance with Rule 7.5(b) of the A.B.A. Model Rules of Professional Conduct which provides that "A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not prevent those who have not demonstrated their competency through the bar admission process from holding themselves out, directly or by implication, as being legally qualified to practice law in the State of Nevada. "The public interest….requires that in the securing of professional advice and assistance upon matter affecting one's legal rights one must have assurance of competence and integrity." Pioneer Title v. State Bar, 74 Nev. 196,189 (1958).

In Formal Opinion 11, this Committee approved a form of letterhead which reflected a Nevada firm's affiliation with an out-of-state law firm. In that case, the Nevada attorney practiced in Nevada under his own name and not the name of the out-of-state firm, so the Nevada firm name was in conformance with SCR 199.

However, the question posed by the present inquiry is different. The attorney is not practicing in the State of Nevada, thought he lives in Nevada and may be assumed for the purposes of this inquiry to maintain an office in Nevada solely for the purpose of providing legal services for clients in states in which he is

licensed. Is the Nevada address misleading as to the attorney's Nevada licensure status? Or put another way, does the letterhead imply that the attorney is licensed to practice law in Nevada?

If the attorney were to indicate on his letterhead that he is not admitted in Nevada, or that he is only admitted in States A and B, there would be no reason to question the propriety of its use. By not limiting his letterhead, one who receives correspondence from him might easily conclude that the attorney is licensed instates A and B in addition to being admitted in Nevada.

Individual attorneys who are listed on the letterhead of Nevada firms are required tolist their jurisdictional limitations so as to not mislead the public about their ability to practice law in Nevada. See: N.Y. County Lawyers Ass'n. Comm. on Professional Ethics, Op. 683 (1990) (Lawyer admitted in another state may sign documents and letters on law firm stationary provided the attorney's status is disclosed in a notation such as "Not Admitted in New York" or "Admitted only in New Jersey."). The reason for this explicit disclosure is because the law firm stationary may be sent to prospective clients who may have legal matters they want handled in Nevada.

However, the attorney in this hypothetical is a sole practitioner and not a member of a Nevada firm, and states categorically that he does not intend to send correspondence to prospective Nevada clients, but only to clients or prospective clients for legal services to be performed in the states in which he is licensed. Even so, his clients in States A and B might be misled into believing that he is licenses to practice in Nevada for them, should the occasion arise. Presumably he would decline such representation, but the assumed ability to practice in Nevada might provide him licensed to practice in the jurisdiction where the office is located." With an advantage in the securing of clients.

Of course an attorney licensed and practicing in Nevada who is also licensed in States A and B may use the proposed letterhead without objection, since sole practitioners licensed in Nevada customarily indicate their licensure status by use of "Attorney And Counselor At Law" or some such other term.

The argument for allowing the proposed form of letterhead is that it accurately states the geographic location of the attorney's office and so is not objectionable unless the attorney is representing Nevada Clients. It is further argued that the propriety of the letterhead is supported by the Nevada Supreme Court decision in the case of In Re Waters. 84 Nev. 712 (1968). For the following reasons, the Committee does not believe that Waters is controlling under this scenario.

In the Waters case, an attorney living in Nevada but licensed in Texas corresponded with two San Quentin Prison inmates. For this correspondence, Waters used stationary in which his former Texas address had been crossed out and his Carson City address typed in. The Supreme Court found that both prisoners knew that Waters was a Texas lawyer and that Waters had not advised them otherwise, and that neither prisoner was involved in the Nevada courts. The Supreme Court concluded that the Nevada rules of professional conduct did not preclude a Texas attorney from corresponding with California prisoners about cases in California, nor did the rules prevent a Texas attorney from mailing his letters from somewhere other than Texas. 84 Nev. 712, 175.

The opinion is very case specific on its facts. The Nevada Supreme Court did not directly opine on whether Waters could have corresponded with the out-of-state prisoners about matters before the Nevada courts or on points of Nevada law. Because the prisoners were apparently fully aware of Waters' licensure status, the issue of whether his letterhead could have been misleading to less well-informed, prospective clients with matters in Nevada was never directly addressed.

The Committee is, of course, in no position to comment on whether use of such letterhead to contact clients in States A and B about work to be performed in those states would constitute a violation of those states' rules governing professional conduct. However, the Committee finds that use of the proposed letterhead to contact potential clients who may in the future need representation in Nevada has such a great potential for being misleading that it should not be used in its present form. The letterhead must

contain some specific disclosure that the attorney is not licensed in Nevada. To do otherwise may lead even his State A and B clients to be misled as to his qualifications.

This opinion is issued by the Standing Committee on Ethics and Professional Responsibility of the State Bar of Nevada, pursuant to SCR 225. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, its Board of Governors, any person or tribunal charged with regulatory responsibilities, or any member of the State Bar.