

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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Opinion 88-019

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[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

SYLLABUS: Under DR 2-102(C), a lawyer shall not hold himself out as having a partnership with one or more other lawyers or professional corporations unless they are in fact partners.

OPINION: We have before us your request for an advisory opinion on whether your law firm may continue to use the name Smith, Jones & Blank for example, when the income from cases handled by attorneys in the office is no longer shared by all partners based upon a partnership agreement. You state in your letter that some of the expenses of operating the firm are still shared but now each attorney must pay his share of the expenses for personal supplies, long distance, and a personal secretary.

Under DR 2-102(C) of the Code of Professional Responsibility, a lawyer may not hold himself out as having a partnership with another lawyer or lawyers, unless they are in fact partners. The ABA Model Rules of Professional Conduct which have not been adopted by Ohio has a substantially identical provision which states: “[I]awyers may state or imply that they practice in a partnership or other organization only when that is the fact.” ABA Model Rules of Professional Conduct, Rule 7.5(d). An annotated version of the Model Rules states that “lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, “Smith and Jones,” for that title suggests partnership in the practice of law.” Annotated Model Rules of Professional Conduct, 329 (1984).

Furthermore, Ethical Consideration 2-12 of the Code of Professional Responsibility states that a lawyer should not hold himself out as a partner or associate if he only shares offices with another lawyer. See also, ABA Committee on Ethics and Professional Responsibility, Informal Op. 1265 (1973). These Code provisions are designed to insure that the particular relationship existing between or among lawyers be

stated clearly so that the public will not be misled. ABA Committee on Ethics and Professional Responsibility, Formal Op. 330 (1972). Notwithstanding the above, this opinion is not intended to address the situations regarding deceased partners and legal professional associations.

Therefore, if you are not in fact engaged in a partnership arrangement, we believe that continued use of a firm name similar to the one mentioned above, might mislead the public into believing a partnership exists.

In conclusion, it is our opinion and you are so advised that a lawyer should be scrupulous in the representation of his professional status and that a lawyer should not hold himself out as having a partnership with another lawyer or lawyers unless they are in fact partners.

This is an informal, non-binding advisory opinion based upon the facts presented and limited to questions arising under the Code of Professional Responsibility.

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Secretary, Board of
Commissioners