

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 95-1

Issued February 3, 1995

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

[Not current-subsequent rule amendments to Gov. Bar R. III, eff. Nov. 1, 1995.]

SYLLABUS: It is improper for an attorney in solo practice to use the phrase "and Associates" in the law firm name to indicate any of the following practice arrangements: that the attorney shares office space with other attorneys; that the attorney co-counsels with other attorneys; or that the attorney employs non-attorney support staff. The phrase "and Associates" may be used in the law firm name if the attorney employs other attorneys.

It is improper for an attorney who is a sole shareholder in a legal professional association to use the phrase "X and Associates, Co. L.P.A." in the firm name, when there are no attorney employees.

A common telephone line utilized by attorneys who share office space with another attorney or law firm should be answered with the salutation "Law Offices" or with the telephone number.

OPINION: This opinion addresses the use of the phrase "and associates" in a firm name. The opinion also addresses the proper telephone salutation when an attorney shares office space with another attorney, law partnership, or legal professional association.

1. Is it proper for an attorney in solo practice to use the phrase "and Associates" in the law firm name to indicate any of the following practice arrangements: that the attorney employs other attorneys; that the attorney shares office space with other attorneys; that the attorney co-counsels with other attorneys; or that the attorney employs non-attorney support staff?
2. Is it proper for an attorney who is a sole shareholder in a legal professional association to use the phrase "X and Associates, Co. L.P.A." in the firm name, when there are no attorney employees?
3. What is the proper telephone salutation for attorneys who share office space with another attorney or with a law firm?

Question One

Is it proper for an attorney in solo practice to use the phrase "and Associates" in the law firm name to indicate any of the following practice arrangements: that the attorney employs other attorneys; that the attorney shares office space with other attorneys; that the attorney co-counsels with other attorneys; or that the attorney employs non-attorney support staff?

Law firm names are carefully regulated within the Code of Professional Responsibility. Any consideration of firm names must begin with a review of DR 2-101(B).

DR 2-102 (B) 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, except that the name of a professional corporation or professional association or legal clinic may contain "P.C." or "P.A." or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. A lawyer who assumes a judicial, legislative, or public executive or administrative post or office shall not permit his [her] name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which he [she] is not actively and regularly practicing law as a member of the firm, and during such period other members of the firm shall not use his [her] name in the firm name or in professional notices of the firm. (Emphasis added).

From this rule, it is indisputable that firm names must not be misleading. Firm names are only to include the names of one or more attorneys in the firm.

Several other rules supplement this rule and are pertinent to the question raised. DR 2-101(A)(1) prohibits all public forms of deceptive and misleading communication by lawyers. DR 2-102 (C) prohibits lawyers from holding themselves out as partners when they are not partners.

DR 2-101 (A) A lawyer shall not, on his or her own behalf or that of a partner, associate, or other lawyer affiliated with the lawyer or the lawyer's firm, use or participate in the use of, any form of public communication, including direct mail solicitation, that:

- (1) Contains any false, fraudulent, misleading, deceptive, self-laudatory, or unfair statement;

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

The phrase "and associates" is not mentioned within the disciplinary rule governing firm names. Yet, it appears in firm names across the state. The questions raised to this Board indicate that there may be ambiguity as to its meaning. For example, is the term "associate" a proper reference to an office sharing attorney, to a co-counsel, or to a non-lawyer employee? Or, does the word "associate" indicate an attorney partner, attorney shareholder, or attorney employee? If the latter is the proper interpretation, then it would be misleading for an attorney with no partners, shareholders, or attorney employees to use the term "and Associates" in a firm name.

The term "associates" is not defined within the Code of Professional Responsibility. However, existing authority within Ohio suggests that the word "associate" is a reference to a partner or to an attorney employee in a law firm. For example, Ethical Consideration 2-12 indicates that an attorney who shares office space with another attorney is not an associate.

EC 2-12 In order to avoid the possibility of misleading persons with whom he deals, a lawyer should be scrupulous in the representation of his [her] professional status. He [she] should not hold himself [herself] out as being a partner or associate of a law firm if he [she] is not one in fact, and thus should not hold himself [herself] out as a partner or associate if he [she] only shares offices with another lawyer. (Emphasis added).

This Board has consistently viewed office sharing attorneys as distinct from partners or associates in the same law firm. For example, in interpreting the disciplinary rules, this Board has advised that office sharing attorneys are not attorneys within the same firm under DR 2-107(A). See Ohio SupCt, Bd of Comm'rs on Grievances and Discipline, Op. 91-5 (1991) (attorneys who share office space must comply with DR 2-107(A) restrictions on division of fees by attorneys not in the same firm); Op. 91-9 (attorneys who maintain separate law practices in the same building are not lawyers in the same firm and must comply with the restrictions on division of fees contained within DR 2-107(A) and must maintain separate filing systems in order to preserve client confidences and secrets under DR 4-101). The Board has also advised that imputed disqualification rules should not automatically be applied to attorneys who share office space. See Ohio SupCt, Bd of Comm'rs on Grievances and Discipline, Op. 89-5 (1989) (when two individual attorneys share office space the facts and circumstances of their relationship will determine if they can ethically represent opposing sides in a case).

In addition, this Board has been adamant in its view that attorneys who share office space may not operate under a common firm name or letterhead. See Ohio SupCt, Bd of Comm'rs on Grievances and Discipline, Op. 88-019 (1988) (attorneys in an office sharing arrangement should not use the name "Smith, Jones & Blank"); Op. 89-36 (1989) (attorneys who share office space should not use letterhead with designations such as "Smith & Jones, An Association of Independent Attorneys," "Smith & Jones, Not a Partnership," "Law Offices of Smith & Jones," "Law Offices, John Smith, Tom Jones," or "Smith & Jones, A Non-Partnership Association").

Within Ohio and across the nation, the weight of authority is that "associates" denotes at least, an employer-employee relationship. Over ten years ago, the Ohio State Bar Association opined that "[a]lthough the word 'associates' is not defined by the Ohio Code of Professional Responsibility, it has, through custom and usage in the practice of law, acquired the special meaning of employer-employee. Thus, the word 'Associates' is used to describe a situation where a firm or individual lawyer has other lawyers working for them or him." See Ohio State Bar Ass'n, Op. 83-1 (1983).

Other states have also defined "associates" as a term describing attorneys employed by another attorney. See Suffolk County Bar Ass'n, Op. 89-2 (undated); Florida Bar, Op. 86-1 (1986); Utah State Bar, Op. 138 (1994), District of Columbia Bar, Op. 189 (1988). Several of these states also caution against the continued use of the term "associates" by a firm that formerly employed staff attorneys. Utah State Bar, Op.138 (1994) (may not continue to use), District of Columbia Bar, Op. 189 (1988) (use depends upon how long the firm has been without attorney employees). Several other states advise that lawyers who share office space or expenses are not considered "associates." Connecticut State Bar Ass'n, Op. 90-27 (1990), Oregon State Bar, Op. 1991-12 (1991). For contrasting view see, Iowa State Bar Ass'n, Op. 80-25 (1980) (lawyers may refer to themselves as "associates" under office sharing circumstances).

If attorneys who share office space are not considered "associates" then it follows that attorneys who co-counsel on cases should not be considered "associates." It also follows that non-attorneys should not be considered "associates." See e.g. Bar Ass'n of Nassau County, Op. 88-34 (1988); Utah State Bar Ass'n, Op. 138 (1994).

This Board adopts the view that the phrase "and Associates" in a firm name indicates that an attorney employs other attorneys. In summary, DR 2-102(B) and DR 2-101(A) (1) requires that firm names must not be misleading. DR 2-102(C) prohibits attorneys from holding themselves out as having partnerships when none exists. EC 2-12 states that an attorney should not hold himself or herself out, as a partner or associate if he or she only shares office space. Based upon these rules of ethics, the Board advises that it is improper for an attorney in solo practice to use the phrase "and Associates" in the law firm name to indicate any of the following practice arrangements: that the attorney shares office space with other attorneys; that the attorney co-counsels with other attorneys; or that the attorney employs non-attorney support staff. The phrase "and Associates" may be used in the law firm name if the attorney employs other attorneys.

Question Two

Is it proper for an attorney who is a sole shareholder in a legal professional association to use the phrase "X and Associates, Co. L.P.A." in the firm name, when there are no attorney employees?

The names of legal professional associations are governed by DR2-102(B) cited above and Rule III Section 2 of the Supreme Court Rules for the Government of the Bar of Ohio. Neither rule refers to the use of "and Associates" in the firm name.

Gov. Bar R. III § 2(A) The name of the legal professional association or legal clinic shall consist of the name of either or both of the following:

- (1) One or more of the active shareholders;
- (2) The name of one or more deceased, retired, or disabled attorneys who were associated with its individual, partnership, or corporate predecessor in the practice of law.

The name shall end with the legend, "Co., L.P.A." or shall have immediately below it, in clearly legible form, the words "A Legal Professional Association." The name of any active shareholder may be retained in the corporate name after death, retirement, or inactivity because of age or disability of the shareholder. This division shall be interpreted with the provisions of the Code of Professional Responsibility with reference to law firm names.

(B) If a shareholder whose surname appears in the association name becomes disqualified to practice law for any reason, the name of the association shall be promptly changed to eliminate the name of the shareholder, who promptly shall dispose of his or her stock in the association.

(C) [Omitted].

As discussed in Question one, the phrase "and Associates" indicates that an attorney employs other attorneys. Thus, in answer to Question Two this Board advises that it is improper for an attorney who is a sole shareholder in a legal professional association to use the phrase "X and Associates, Co. L.P.A." in the firm name, when there are no attorney employees.

Question Three

What is the proper telephone salutation for attorneys who share office space with another attorney or with a law firm?

A common telephone line utilized by attorneys who share office space with another attorney or law firm should be answered with the salutation "Law Offices" or with the telephone number. These generic salutations indicate that the attorneys are not operating under a common firm name. The "Law Offices" or telephone number greeting should help signal to the public that the attorney is not practicing with another firm. Such greeting comports with DR 2-102(B), 2-101(A) (1), 2-102(C) and EC 2-12.

This Board is not alone in the view that "Law Offices" is the proper telephone salutation when attorneys share office space and a common telephone line. See Connecticut Bar Ass'n, Op.89-23 (1989), Rhode Island SupCt, Ethics Advisory Panel, Op. 88-5 (1988). Although some might find this view too stringent, there are alternatives. If the attorneys who share office space wish their phones to be answered using their own individual name as a greeting, they may establish separate telephone lines.

Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney's Oath of Office.