

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 89-36

Issued December 15, 1989

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]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: Lawyers are prohibited from holding themselves out as partners unless they are in fact partners under DR 2-102 (C) of the Code of Professional Responsibility. Lawyers who share office space should not use common letterhead because it implies the lawyers are partners or are associated in a Legal Professional Association. In our view, the use of disclaimers on a joint letterhead in an office sharing arrangement would not clarify the otherwise misleading letterhead. In fact, terminology such as "an association of independent attorneys," or "a non-partnership association" tend to confuse and mislead the public, who may be unaware of the meaning of those terms.

OPINION: We have before us your request for an opinion relating to the use of one letterhead by attorneys in an office sharing arrangement when the letterhead includes some form of disclaimer regarding the professional relationship. Your request includes the following five specific examples of letterhead forms and disclaimers.

- a) Smith & Jones
An Association of Independent Attorneys
- b) Smith & Jones
Not a Partnership
- c) Law offices of Smith & Jones
- d) Law Offices
John Smith
Tom Jones
- e) Smith & Jones
A Non-Partnership Association

Your question is whether or not any of the above examples are sufficient to avoid violating DR 2-102(C) prohibiting lawyers from holding themselves out as having a partnership, unless they are in fact partners.

As we noted in a prior opinion, the ABA has stated 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." Board of Commissioners Informal Op. 88-19 (1988), citing, Annotated Model Rules of Professional Conduct, 329 (1984). Lawyers are prohibited from holding themselves out as partners unless they are in fact partners in order to insure that the particular relationship existing between or among lawyers is stated clearly so that the public will not be misled. ABA Committee on Ethics and Professional Responsibility, Formal Op. 330 (1972).

In our view, lawyers who are in an office sharing arrangement can avoid misleading or confusing the public by having separate letterheads for each practitioner. Lawyers in an office sharing arrangement, unlike a partnership arrangement, have not agreed to share liability for any loss attributable to activities of the partnership. ABA/BNA Lawyers' Manual on Professional Conduct, 81:3004 (1989). The listing of other lawyers on a letterhead implies that those listed are available to lend skill and expertise in any given case, which is not the case in a typical office sharing arrangement. Id.

A disclaimer on the letterhead, such as the five listed in your request, would not clarify the relationship among the lawyers on the letterhead. Instead, disclaimers tend to confuse and mislead the public, who may be unaware of the meaning of the terms used. See, e.g., Michigan Ethics Op. CI-1178 (1988), Pennsylvania Ethics Op. 85-100 (1985), Oregon Ethics Op. 486 (1983).

In conclusion, it is our opinion and you are so advised that lawyers who share space but are not associated as partners or members of a professional corporation should use separate letterheads. The use of a common letterhead by lawyers who only share office space implies a beneficial association or organization when, in fact, there is none. Instead of informing consumers, additional information on such a letterhead disclaiming any association between the lawyers tends to mislead or confuse consumers.

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