

REPORT . . . LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

By

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With increasing frequency, I have become aware that many lawyers in private practice are holding themselves out as partnerships when there is a mere office-sharing arrangement. I would like to alert the bar to the fact that, notwithstanding past practices and customs in some regions of the state, the staff of the Lawyers Professional Responsibility Board will begin enforcing rules and existing authorities regarding law firm names from this point forward.

Some "firms" list themselves on letterheads, pleadings, retainer agreements, and other documents, as "Able, Baker & Charlie, Attorneys at Law," even though the three attorneys are merely sharing offices. The use of any "firm" name without the existence of a partnership or professional corporation is improper. This practice has been condemned consistently in several published ethics opinions, and it violates the provisions of the Code of Professional Responsibility, as follows:

"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 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 . . ."

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

Ethical Consideration 2-13 states the rationale underlying the above prohibitions:

"EC 2-13. In order to avoid the possibility of misleading persons with whom he deals, a lawyer should be scrupulous in the representation of his professional status. He should not hold himself out as being a partner or associate of a law firm if he is not one in fact, and thus should not hold himself out as a partner or associate if he only shares offices with another lawyer."

Use of a “firm” name, such as “Able, Baker & Charlie,” has consistently been held to represent that a partnership exists.

A number of collateral ethics rules are made to hinge upon the existence of a partnership or employment situation. For example, rules and cases regarding conflicts of interest and attorney/client privileged communications often depend upon whether the affected lawyers are partners or have an employer-employee relationship. A “law firm” which holds itself out as a partnership when it is not creates a conflicting set of circumstances which gives rise to substantial doubts as to what conversations may be privileged and as to the precise scope of conflict of interest prohibitions.

It should be emphasized that there is nothing wrong with office-sharing arrangements among attorneys. Attorneys can, with proper safeguards, share office space, library facilities, and employees. However, the attempt to hold out such office-sharing arrangements as a “law firm” or partnership serves to mislead clients and the public.

Commencing with the publication of this article, the Board’s staff will enforce the Code provisions relating to firm names, as set forth above.