

THE NAME "LAW FIRM" MUST MEAN JUST THAT.

By

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In his November, 1977 column, former Director R. Walter Bachman, Jr. announced that the Director's office would begin enforcing rules and existing authorities regarding law firm names used by those sharing office space. The Board has now suggested that I remind practitioners of these rules.

In his column, Mr. Bachman described the problem as follows:

"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. . ."

The current Code of Professional Responsibility contains the following provisions regarding firm names:

"DR 2-102(B) A lawyer in private practice shall not practice under a name that is false, fraudulent, misleading or deceptive, or a firm name containing names of persons other than those of one or more lawyers in the firm, except that, 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 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 also states, in part, as follows:

". . . 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."

To use a firm name such as "Able, Baker & Charlie," is to represent that a partnership exists. If in fact there is no partnership the use of such a name is misleading in violation of DR 2-102(B). Qualifying words such as "not a partnership" following the "firm" name do not cure the misleading nature of the name. First, there is still the representation that a "firm" exists when in fact none does. Second, even if clarifying language indicated that no firm existed, the name would violate DR 2-102(B) because it would include "names other than those of one or more lawyers in the firm."

In his column, Mr. Bachman also stated:

"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."

Since Mr. Bachman's column, there have of course been many changes in the lawyer advertising area. None of those changes has affected the validity of the Director's 1977 statement of policy. Consequently, our current policy of enforcing the disciplinary rules in accord with the foregoing principles will continue.