KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-259
Issued: May 1982

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at http://www.kybar.org), especially Rules 7.01-7.50 and the Attorneys' Advertising Commission Regulations, before relying on this opinion.

Question 1: May two lawyers list on the letterhead or by other means "Jones & Jones" when in fact there is no partnership?

Answer 1: No.

Question 2: May a lawyer be a member of more than one law firm?

Answer 2: Qualified yes.

References: DR 2-102(A)(C)(D), 5-105(D); ABA Formal Opinion 330; KBA E-62, 83; EC 2-11, 2-12; Cinema 5, Inc v. Cinerama, Ltd, 528 F.2d 1384 (2d Cir 1976)

OPINION

Question 1

The listing on the letterhead of the names of the lawyers in a law firm is well defined within the Code of Professional Responsibility. Specifically the Ethical Considerations mention that the possibility of misleading persons with whom the lawyer deals could be a factor in the selection process of the lawyer. It is with this reason that the Code of Professional Responsibility states under 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."

In KBA E-62 we answered the question, "May associates who have a relationship that is something less than a true partnership adopt a firm name?" in the negative. In that opinion we stated:

> It is both improper to designate a lawyer as an 'associate' who shares fully in the responsibilities and the liabilities of other attorneys in the office, and it is improper to utilize the term "partner" to designate an attorney who does not share fully in the responsibilities and liabilities of the other attorneys involved.

KBA E-62 went on to point out that there can be no such thing as a "limited partnership as far as responsibilities and liabilities are concerned." The opinion stated:

> In such situations the public is inclined to believe that the entire mental and legal resources of the firm are available, if need be. So long as the attorneys work independently of one another, maintain separate records, and refrain from jointly sharing responsibilities and liabilities they must refrain from holding themselves out as a partnership.

This Committee reaffirms KBA E-62 as well as DR 2-102(C). A lawyer who practices under a misleading name certainly violates the Code of Professional Responsibility and commits acts which tend to bring the Bench and Bar into disrepute.

Question 2

The Code of Professional Responsibility does not specifically address the question of whether a lawyer may be a partner in two different and distinct law firms. See ABA Formal Opinion 330. In this opinion the ABA recognized that a lawyer could become "of counsel" in two firms under highly unusual circumstances.

The American Bar Association relied upon DR 2-102(A)(4) in stating that "a lawyer may be designated 'of counsel' on a letterhead" if he has a continuing relationship with the lawyer or law firm, other than as a partner or associate.

The Ethics Committee is aware of no opinions which would preclude a lawyer from being a partner in more than one law firm. A lawyer who desires to be a partner in more than one law firm should be aware of the myriad of conflicts of interest that would be present. More specifically the lawyer should always be leery of DR 5-105(D): "If a lawyer is required to decline employment or to withdraw from employment under DR 5-105, no partner or associate of his or his firm may accept or continue such employment."

Accordingly when one lawyer in one law firm would be precluded from the employment all members of the law firm as well as members of the other law firm would be precluded from the employment.

It is not the function of this Committee to consider the wisdom of a lawyer being a partner (and/or associate, of counsel) in more than one law firm. For a case showing the problems of a partner in more than one law firm, see Cinema 5, Ltd v. Cinerama, Inc, 528 F.2d 1384 (2d Cir 1976). Assuming that there is a valid reason for the lawyer to be in more than one law firm and that that lawyer has a "close, continuous and regular relationship with the law firm it is permissible."

The Ethics Committee, however, feels that it would be impossible to have a close, continuous and regular relationship with more than two law firms.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.