

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-311
Issued: January 1986

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: Does the Code of Professional Responsibility prohibit the designation on letterhead of one firm as affiliated or associated with another, as long as the relationship between the firms is such that the communication is not false and misleading and the law firms adhere to the applicable rules regulating disclosure of confidential information and conflicts of interest as if they were a single firm?

Answer: No.

References: ABA Formal Op. 84-351; KBA E-299, DR 2-102(B)(C); EC 2-13.

OPINION

In KBA E-299, an attorney proposed the use of a "common firm name" for an "umbrella firm" consisting of three separate offices with shared facilities in which there would be no sharing of fees or reciprocal financial responsibility. We rejected the use of such a "common firm name", which is consistent with the above cited DRs, as well as KBA E-62 and E-259, distinguishing a seemingly contrary opinion, New Jersey Opinion 383, as a special case involving a registered group legal services arrangement. We continue to adhere to that opinion, since it simply prohibits a lawyer from holding himself out as a partner or associate of another lawyer when that is not, in fact, the case.

On the other hand, the phrasing of the question and answer in KBA E-299 suggests that "separate" firms or attorneys may never hold themselves out as being otherwise associated or affiliated.

The rather fine distinction presented in the above question was addressed by the ABA in Formal Op. 84-351 which was released but was not generally available during the period of time that KBA E-299 was being prepared.

ABA Formal Opinion 84-351 permits communications as to the "affiliation" or "association" of firms, so long as:

- (1) the relationship between the firms is 'close and regular, and not merely that of forwarder-receiver of legal business';

- (2) the “affiliate” is available to the other firm and its clients for consultation and advice;
and
- (3) the firms recognize that they are “associates” for purposes of conflicts of interest rules.

We accept ABA Formal Opinion 84-351 as a reasonable modification of the prohibition set forth in KBA E-299.

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.