

Nebraska Ethics Advisory Opinion for Lawyers  
No. 73-11

IT IS IMPROPER FOR TWO OR MORE PRIVATE PRACTITIONERS WHO SHARE OFFICE EXPENSES BUT ARE NOT IN FACT PARTNERS TO HOLD THEMSELVES OUT AS A PARTNERSHIP. THIS PRECLUDES THEM FROM ADOPTING A PARTNERSHIP NAME, SUCH AS "SMITH, JONES & BROWN" AND FROM USING SUCH NAME ON THE DOOR OF THE LAW OFFICE, ON LETTERHEADS, IN THE YELLOW PAGES OF THE TELEPHONE DIRECTORY, IN ANSWERING THE TELEPHONE, OR IN ANY OTHER MANNER.

APPLICABLE CODE PROVISIONS

EC 2-11: "The name under which a lawyer conducts his practice may be a factor in the selection process. The use of a trade name or an assumed name could mislead laymen concerning the identity, responsibility, and status of those practicing thereunder. Accordingly, a lawyer in private practice should practice only under his own name, the name of a lawyer employing him, a partnership name composed of the name of one or more of the lawyers practicing in a partnership, or, permitted by law, in the name of a professional legal corporation, which should be clearly designated as such."

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."

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."

CANON 33:

The inquirer states that he is one of three private practitioners in a law office who is sharing office expenses but is unincorporated and is not a partner. He inquires as to whether or not the name "\_\_\_\_\_, \_\_\_\_\_ & \_\_\_\_\_" can be used in answering the office telephone, on the door of the office, in the yellow pages of the telephone directory, and in their general practice.

The provisions of DR 2-102(C) above quoted clearly compel an answer in the negative. The use of a partnership name which implies a sharing of liability and responsibility when, in fact, no such joint liability exists, is misleading and a misrepresentation to the public.

The Standing Committee on Professional Ethics of the American Bar Association has considered this question upon a number of occasions. In Informal Opinion 555, the following appears:

"This Committee has stated on numerous occasions that it is improper for a group of lawyers to hold themselves out as a partnership when no partnership relation in fact exists. See Formal Opinions 106, 115, 126 and 277. Formal Opinion 277, in referring to Canon 13 which provides for partnerships among lawyers, states that there must be a true partnership involving a joint and several responsibility."

In Formal Opinion 310, the answer is clearly expressed in the following example:

"2. Smith and Jones each are individual lawyers. Although they practice law together from the same suite of offices and share in some of the costs of the practice, each lawyer has his own clients and they do not share in the responsibility and liability of each other."

\* \* \*

"2. The word 'associates' would be misleading to describe the situation existing in paragraph (2) above, when there is no sharing of responsibility and liability. In the same way, the joining of two or more of the names of such persons practicing together into a title for the firm would be misleading and a violation of Canon 33. For example: where there is no sharing of responsibility and liability, 'Law Offices of Jones & Smith', or 'Jones & Smith Attorneys and Counselors at Law', would be misleading. Each lawyer should use separate stationery, with his own name and not that of a firm on it. He should not join his name with others on cards, in law lists, or in telephone directories. The door of the firm when otherwise appropriate, may contain the names of the persons practicing therein no more closely connected than the following example:

Law Offices  
Charles W. Jones  
Peter S. Smith"

For the foregoing reasons, the Opinion of the Committee is that the requested use of the names is not permissible.

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