

DELAWARE STATE BAR ASSOCIATION
COMMITTEE ON PROFESSIONAL ETHICS

Opinion 1983-2

The Committee has been asked by a Delaware lawyer for its opinion concerning the use of his name in the name of the firm. The lawyer is an associate, not a partner, in the firm. The firm has recently decided to change its name to include the name of the associate. In his inquiry, the lawyer expresses concern about the impact of Disciplinary Rule ("DR") 2-102(C) of the Delaware Lawyer's Code of Professional Responsibility (the "Code").¹ The lawyer states that he makes it a regular practice to respond to all inquiries by indicating that he is not, in fact, a partner. However, the lawyer is sensitive to the public perception that a lawyer whose name appears in the name of a firm is a partner.

OPINION

The name of an associate in a law firm partnership may not appear in the name of the firm.

DISCUSSION

DR 2-102(C) of the Code provides:

¹Delaware Supreme Court Rule 61 states:

The Canons and Disciplinary Rules of the Delaware Lawyer's Code of Professional Responsibility, promulgated by Order of this Court, dated March 22, 1971, together with all amendments thereto and interpretive guidelines thereafter adopted by this Court, shall govern the conduct of members of the Bar of this State.

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 2-11² provides, in relevant part, as follows:

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 law persons concerning the identity, responsibility and status of those practicing thereunder. Accordingly, a lawyer in private practice should practice only under a designation containing his own name, the name of the lawyer employing him, the name of one or more of the lawyers practicing in a partnership, or, if permitted by law, the name of a professional legal corporation, which should be clearly designated as such.

The Code does not define a partnership, although the American Bar Association Committee on Professional Ethics (the

²In adopting the Delaware Lawyer's Code of Professional Responsibility, the Supreme Court stated that: "The ethical considerations and notes contained in [the ABA Code of Professional Responsibility] are hereby approved in principle as interpretive guidelines, where appropriate, in the application of the Canons and disciplinary Rules hereby promulgated." In a footnote, the Supreme Court observed that:

The Ethical Considerations are aspirational in character and represent the objectives toward which every member of the profession should strive. They constitute a body of principles upon which the lawyer can rely for guidance in many specific situations.

The Disciplinary Rules, unlike the Ethical Considerations, are mandatory in character. The Disciplinary Rules state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action . . .

Order of the Supreme Court of the State of Delaware, dated March 22, 1971, adopting the Delaware Lawyer's Code of Professional Responsibility. See Pennwalt Corp. v. Plough, Inc., 85 F.R.D., 264, 268 n. 5 (D. Del. 1979).

"ABA Committee") stated in Informal Opinion 1383 (May 1, 1977) that DR 2-102(C) "refers to a partnership in the traditional sense." A partnership name should not suggest the existence of a partnership where there is none. ABA Committee Formal Opinion 318 (July 3, 1967). In Formal Opinion 106 (March 9, 1934), the ABA Committee opined that it is improper for a group of attorneys to hold themselves out as a partnership where one member of the group employs others at fixed salaries, and no partnership, in fact, exists.

Rule 7.5(d) of the American Bar Association's Model Rules of Professional Conduct (1983)³ provides:

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

The Comment thereto states, in relevant part, as follows:

With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law.

In conclusion, the name of an associate in a law firm partnership may not appear in the name of the firm because of the possibility that the public may perceive the associate as a partner.

³While the Model Rules of Professional Conduct have not been adopted in Delaware, Rule 7.5(d) is substantially identical to DR 2-102(C) and the Comment thereto is helpful in interpreting the existing DR and the proposed Rule.