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DEFINITION OF ASSOCIATES AS APPLIED TO LAWYERS

Adopted November 29, 1972.

Addendum issued 1995.

Syllabus

It is improper to use the term “associates” to describe lawyers, not employees, who share office space and some costs but do not share in responsibility and liability for each other’s acts. It is also improper to use “associates” to describe lawyers who are in fact partners. However, it is proper to use the term “associates” to describe lawyers who are employees of another lawyer or law firm and who do not generally share in responsibility or liability for the acts of the firm.

Facts

1. Lawyers A and B share office space and costs but are not partners and do not share liability or responsibility for each other’s acts. Their letterhead reads “A and B, Associates.”

2. Lawyer B offices in the same suite of offices as Lawyer A. In return for a specific amount of work done each month for A, B gets his rent free. However, in all other respects each lawyer maintains his own separate business. Lawyer A’s letterhead reads “A and Associates.”

3. Lawyers A, B and C are partners. Their letterhead reads “A and Associates” with B and C’s names printed along the margin.

4. Lawyer A employs lawyers B and C on a full-time basis. B and C do not share in responsibility for acts of the firm. The letterhead reads “A and Associates.”

5. Lawyers A, B and C are partners. They employ lawyers D, E, F and G on a full-time basis. The letterhead reads “A, B, C and Associates.”

(The foregoing fact situations are illustrative and serve as a guide to the general principles contained in this Opinion. These principles, therefore, may also be applicable to other fact situations not given.)

Opinion

It is the opinion of the Committee that examples 1, 2 and 3 violate the Code of Professional Responsibility, while examples 4 and 5 are proper.

Traditionally, in connection with the practice of law, the word “associates” is used to describe lawyers who are employees of a firm.

Canon 2 of the Code of Professional Responsibility and the ethical considerations and disciplinary rules thereunder govern this situation.

The ethical considerations to Canon 2 state in part:

. . . 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 one or more of the lawyers practicing in a partnership, or, if permitted by law in the name of a professional legal corporation which should be clearly designated as such. EC 2-11.

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. EC 2-13.

In addition, the disciplinary rules associated with Canon 2 require:

A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm. . . . DR 2-102(B).

A lawyer shall not hold himself out as having a partnership with one or more lawyers unless they are in fact partners. DR 2-102(C).

It is clearly misleading for persons merely sharing office space to hold themselves out as associates.

ABA Formal Opinion 310 adopted in 1963 is directly on point with regard to the use of the term “associates.” That Opinion referred to Formal Opinion 219 to substantiate its opinion that the use of the term “associates” negates the existence of a partnership. The Opinion was careful to clarify when the use of the term “associates” was proper:

Those lawyers who are working for an individual lawyer or law firm may be designated on the letterhead and in other appropriate places as ‘associates.’ Thus a letterhead giving the name of the firm as Jones and Smith and listing as partners Charles Jones and Peter Smith, could also list as ‘associates’ the names of other lawyers who are employed by the firm.

Even without listing the ‘associates’ the word may properly be used in connection with the name of the partner or the individual in private practice to describe a situation in which the firm or the individual has other lawyers working for them or him who are not partners and who do not generally share in the responsibility and liability for the acts of the firm.

The use of the word “associates” to describe the employer-employee relationship also serves as a notice to persons who select a particular firm that Lawyer A of “A and Associates” employs other attorneys and that while A may not himself perform all the work, that A is responsible for any work performed by his employees. Further, persons who deal with the firm are on notice that lawyers other than A may be doing some of the work.

ABA Opinion 310 was followed and expanded upon by ABA Opinion 318 adopted in 1967. That Opinion held it was proper to use the term “associates” as a method of indicating limited responsibility of a member of a lawyer’s professional corporation.

Although both ABA Opinion 310 and 318 were adopted prior to the adoption of the Code of Professional Responsibility, footnote 35 to Canon 2 of the Code indicates that the use of the term “associates” is still proper for the limited purpose of describing employees of a lawyer or law firm.

1995 Addendum

The Colorado Rules of Professional Conduct became effective on January 1, 1993, replacing the Code of Professional Responsibility. While the language of the Rules is somewhat different from the Code, the Ethics Committee considers this Opinion to continue to provide guidance to attorneys in this area. Attorneys are cautioned to review Tables A & B: Related Sections in the Colorado Rules of Professional Conduct and The Colorado Code of Professional Responsibility (found in the *Colorado Ethics Handbook*), to update the research contained in this Opinion and to conduct any independent research necessary.

Relevant provisions of the Colorado Rules of Professional Conduct, which should be examined together with this Opinion, are Rule 7.1 (regarding communications regarding a lawyer’s services); and Rule 7.5, including the Comment and Committee Comment (regarding firm names and letterheads).

The Ethics Committee directs attorneys to Opinion 89 and the relevant provisions of the Colorado Rules of Professional Conduct contained in that opinion. This opinion is supplemented by Opinion 89 which should be reviewed in conjunction with the Rules.