

Nebraska Ethics Advisory Opinion for Lawyers
No. 80-10

THE IMPROPRIETY OF TWO OR MORE LAWYERS HOLDING THEMSELVES OUT AS A PARTNERSHIP WHEN THEY ARE NOT IN FACT PARTNERS, IS NOT REMOVED BY INSERTION UNDER THE FIRM NAME OF THE WORDS: (NOT A PARTNERSHIP).

FACTS

The inquiring attorney states that he received an announcement from out-of-state attorneys of the formation of "The Law Firm of ___ and ___ (Not a Partnership)". The individual lawyers were then named as being associated with the firm in the general practice of law. The Advisory Committee is asked whether or not such an announcement would be proper in Nebraska.

DISCUSSION

This Committee held in [Opinion No. 73-11](#) that:

"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."

Both then and now DR 2-102(C) provides:

"A lawyer shall not hold himself out as having a partnership with one or more other lawyers unless they are in fact partners."

The reasoning behind the prohibition is that use of the partnership name, such as "Smith and Jones", implies a sharing of liability and responsibility and it is misleading

and a misrepresentation to the public if in fact such joint and several liability does not exist.

CONCLUSION

Does the fact that the announcement carries the disclaimer "Not a Partnership" eliminate the impropriety?

We do not feel that it does. For one thing, the Disciplinary Rule above quoted is a flat prohibition against a lawyer holding himself out as a partner with another lawyer when he in fact isn't, and there is no question but that the title "Smith and Jones", especially when preceded by the words, "Law Firm", indicates a partnership relation and is a holding out of themselves by the lawyers as having a partnership. DR 2-102(C) could easily have been made conditional and provided for the use of a disclaimer had that been the intention.

A second practical reason leads to the same conclusion. It would be virtually impossible to have the disclaimer effectively set forth each time the firm name was used--as, for example, in answering the telephone. It would have to appear everywhere the name is mentioned--on court pleadings, letterhead, telephone listings, directory listings, etc. In such connection, a check of the 1980 listing of this firm in Martindale-Hubbell does not include any disclaimer; on the contrary, the biographical section lists ___ and ___ as "Members of the Firm".