ADVISORY ETHICS OPINION 92-03

SYNOPSIS:

Designation of lawyers on letterhead as “Associates”, when arrangement is more akin to office-sharing, may be misleading, and therefore, impermissible.

FACTS:

Lawyer A practices law under the firm name of "Lawyer A, P.C." Lawyer A seeks to continue doing business under the name "Lawyer A, P.C.", and to add the names of three different lawyers, X, Y, and Z to the firm.

"Lawyer A, P.C." and X, Y and Z will enter into a "Participation Agreement" which provides (1) monthly rent for use of the facilities, including shared use of the library, conference room, secretarial services, bookkeeper and office equipment; (2) listing of X, Y and Z on the firm's letterhead as "Associates", but requiring X, Y and Z to be responsible for their own clients; all sums collected on their billings would be turned over to them; and requiring reciprocal hold harmless agreements from liability for claims on work performed by one on behalf of the other or under the general umbrella of the law firm; (3) endorsement of the firm's errors and omissions coverage to add the names of X, Y and Z; provided however, that they would be responsible for their pro rata share of the additional premium; (4) X, Y and Z would be responsible for their share of the workers' compensation coverage and the employer's share of the FICA contributions; and (5) a reciprocal business referral arrangement.

Lawyer A asks this Committee whether there exists any ethical barriers to the arrangement as proposed above.

DISCUSSION:

The proposed relationship between "Lawyer A, P.C." and X, Y and Z appears to be more in the nature of an office-sharing arrangement. The Participation Agreement sets forth an arrangement whereby X, Y and Z appear to be independent lawyers who are sharing offices and expenses with "Lawyer A, P.C.", as opposed to the usual role as "Associates."

DR 2-102 (D) prohibits a lawyer from holding himself/herself out as having a partnership or other organization with one or more lawyers when no such partnership or organization exists.[1] DR 2-102 (A) prohibits lawyers from practicing under a misleading name or a name including the names of lawyers not in the firm. DR 2-102 (A); EC 2-13.[2] "The distinction between a partnership (or professional corporation) and a cost-sharing relationship may be lost or unrecognized by the average [layperson]."[3]

EC 2-13 provides as follows:

> In order to avoid the possibility of misleading persons with whom he/she deals, a lawyer should be scrupulous in the representation of his/her professional status. He/she should not hold himself/herself out as being a partner or associate of a law firm if he/she is not one in fact, and thus should not hold himself/herself out as a partner or associate if he/she only shares offices with another lawyer.[4]

EC 2-11 provides in part:

> The name under which a lawyer conducts his/her practice may be a factor in the selection process. The use of a trade name or an assumed name could mislead laypersons concerning the identity, responsibility, and status of those practicing thereunder. Accordingly, a lawyer in private practice should practice only under his/her own name, the name of a lawyer employing him/her, a partnership name composed of the name 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 he clearly designated as such.

EC 2-11. Typically, each lawyer is advised to have a separate letterhead, business card, telephone directory listing, pleading papers, and so forth.[5]

[1] DR 2-102 (0); *see also* Opinion No. 77-4.
[2] *See also* Opinion No. 77-4.
[3] Opinion 79-22.
[4] EC 2-13; *see also* ABA Formal Opinion 310 (6/20/63) (lawyers who share space and other costs, but who do not share liability, may not describe themselves as associates; for example, "Law Offices of Jones and Smith" would be misleading).
[5] ABA Formal Opinion 310 (6120/63); Connecticut Bar Informal Opinion 85-2 {undated); Illinois Bar Opinion 764 (1/12/82); Michigan Bar Informal Opinions CI-1039 {9/10/84) and CI-1044 (11/14/84); Philadelphia Bar Opinion 86-82 {6/19/86); Washington Bar Opinion 178 (9/84).

Office-sharing arrangements' between lawyers are generally permitted.[6] However, lawyers involved in these arrangements should keep in mind a number of considerations: Each lawyer in an office-sharing situation usually must use his/her own letterhead, business cards and telephone numbers; a lawyer cannot imply that there is a partnership or other professional association where none exists; it is usually considered misleading and therefore improper to use a firm name linking the names of office sharers; rules regarding division of fees and preservation of client confidences and secrets must be observed.[7]

In the present case, X, Y and Z do not appear to be "Associates" working for the law firm of "Lawyer A, P.C." They will rent office space and share secretarial services, as well as office equipment. The bookkeeper will do the billing for the firm and all participants; but all sums collected on the billings of each will be turned over to that lawyer. Each lawyer would purport to hold each other harmless from professional negligence claims. In fact, this is a group of sole practitioners to be bound together in a cost-saving, office-sharing arrangement.

For the foregoing reasons, the Committee believes that the proposed arrangement between "Lawyer A, P.C." and Lawyers X, Y and Z would be misleading, and as such, violative of DR 2-102 (A) and DR 2-102 (D) and EC 2-11, EC 2-13 and EC 9-7.

[6] See Opinion No.80-15.

[7] *See* ABA Formal Opinion 310 (6/20/63); Los Angeles County Bar and Formal Opinion 1981-4 (12/3/81); Minnesota Bar Informal Opinion 5 (5/83); Oregon 486 (6/83); *but see* Opinion No.79-22 (sharing of secretary and file drawers would imperil the confidences and secrets of the client).