

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-246
Issued: July 1981

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), especially Rules 7.01-7.50 and the Attorneys' Advertising Commission Regulations, before relying on this opinion.

Question: May an attorney, John Doe, who is incorporated in accordance with KRS Chapter 274, practice law under the designation John Doe & (Associates), (Lawyers), (Attorneys) P.S.C.?

Answer: Qualified yes.

References: DR 2-102(B), 3-103; KRS 274.077; ABA Formal Opinion 219, 310, 318; 45 NYSBJ 280 (1973)

OPINION

The Committee is asked to render an opinion whether, in light of KRS 274.077, permitting a professional service corporation to do business under an assumed name, a law firm organized pursuant to KRS Chapter 274 may engage in the practice of law under a designation employing the name of one member and the term "Associates," or other like appellation.

DR 2-102(B) provides in pertinent part:

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, except that the name of the professional corporation or professional association may contain "P.C." or "P.A." or similar symbols indicating the nature of the organization....

In ABA Formal Opinion 318, the Committee on Professional Ethics reviewed its former prohibition of the use of "and Associates," in a firm name, and subsequent relaxation of that prohibition in ABA Formal Opinion 310. In Formal Opinion 219 the Committee determined that the use of the term "and Associates" was misleading and hence a violation of Canon 33 (predecessor of DR 2-102(B)) because it negated the existence of a partnership.

In Formal Opinion 310, the Committee sanctioned the use of the term "and Associates" to denote a firm structure in which an individual or partnership employed other lawyers who did not

share partnership status. The thrust of the opinion then, was to ensure that the public was apprised of the true nature of the firm organization. Similarly, in approving the concept of professional service corporations, the Committee warned that such organizations must see to it that the public is not misled concerning the restrictions on the responsibilities of individual lawyers for the legal services they perform. Thus, in Formal Opinion 318, the Committee held:

[The use of the term “associates” following the name of one or more members of a professional corporation or association is a proper method of indicating the limited responsibility of the members of such an organization.

The New York State Bar Association has taken a similar position, holding, in Opinion 286, that a firm which employs two or more associates may use the appellation “and Associates,” 45 NYSBJ 280 (1973).

Accordingly, this Committee concludes that a professional service corporation may conduct the practice of law under the name of one member “and associates” provided two or more “associates” are employed by the corporation. Use of the terms “and Lawyers” or “and Attorneys” is, however, potentially misleading, there being a remote possibility that a member of the public could infer a distinction in professional status between the named member and the “lawyers” or “attorneys.” Partnership between a lawyer and a non-lawyer, involving the practice of law, would, of course, violate DR 3-103.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.