ILLINOIS STATE BAR ASSOCIATION

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in July 2010. Please see the 2010 Illinois Rules of Professional Conduct 7.1 and 7.5(d) with its Comment [2]. See also ISBA Ethics Advisory Opinion 91-2. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

Opinion Number 85-2
October 4, 1985

Topic: Law Firm Affiliations; Firm Names

Digest: Attorneys in a firm may not hold themselves out as practicing independently or in the name of non-existent firm.

Ref: Canon 2; Rule 2-101(b); EC 2-11, 2-13
ISBA Opinion Nos. 294 & 84-10

FACTS AND QUESTIONS

A firm having the opportunity to engage in an area of practice dissimilar to that in which it is presently involved desires to separate such activity from its present practice. To that end, it inquires as to the propriety of having partners or employees of the firm conduct the new area of practice in their own names without representation of the fact of their association with the firm. The letterhead to be used by such attorneys would contain their individual names or suggest a partnership dissimilar from the firm's name, and their activities may be conducted at a location

different from that of the firm.

Alternatively, the firm inquires as to having partners of the firm act as undisclosed partners of what it refers to as an "independent" satellite firm to be owned and controlled by the original firm.

OPINION

The primary ethical concern involved in the proposed arrangements is the possibility of misleading laypersons with respect to the identity of those with whom they are dealing.

To the extent that the names to be used, and their appearance on the respective firm letterheads, constitute lawyer publicity, they are subject to the restrictions of Rule 2-101(b). That Rule requires that such communications with the public "contain all information necessary to make the communication not misleading" and "not contain any false or misleading statement or otherwise operate to deceive."

EC 2-11 provides that:

> The use of a name which could mislead laypersons concerning the identity, responsibility and the status of those practicing thereunder is not proper.

For example, it would be improper if a name utilized by a firm gave the impression that a member or employee of the firm was a member or employee of another firm if such were not the case. Nor could any individual expressly or impliedly hold himself or herself out as associated with any firm other than that to which such individual in fact belongs. EC 2-13.

Directly on point is ISBA Opinion No. 294, which held it improper for a firm using a name such as "Brown, Jones, & Smith" to carry on a special branch of its practice under the name "R.H. Brown and Associates," since the latter name negated the existence of a partnership which in fact existed. See also ISBA Opinion No. 84-10.

It is thus our conclusion that the initial arrangement suggested by the inquiring firm whereby certain of its members would practice in a different name, would violate the provisions of Rule 2-101(b).

As regards the second question, we are unclear as to what the firm intends in stating that partners of the firm would be undisclosed partners of an "independent" satellite firm to be owned and controlled by the original firm. The facts of ownership and control would indicate that the satellite firm is not in fact to be separate and independent, but rather to be merely a branch of the original firm. Such being the case, it would suffer from the same infirmities as the first arrangement. This is not to say, however, that under appropriate circumstances persons cannot have affiliations with more than one firm.

Obviously, other ethical issues may arise in connection with the proposed arrangements, including those concerned with space sharing, client referrals, fee division, and conflicts of interest, but these are not addressed in the inquiry or in this Opinion.