

11/19/91

N. H. ETHICS OPINIONS ANNOTATED

FO 1988-89/5

NEW HAMPSHIRE BAR ASSOCIATION  
Ethics Committee Formal Opinion #1988-89/5  
Letterhead Listing - Affiliated Law Firms  
February 9, 1989

RULE REFERENCES:

- \*Rule 1.6
- \*Rule 1.7
- \*Rule 1.10
- \*Rule 7.1
- \*Rule 7.5
- \*Rule 7.5(a)
- \*Rule 7.5(d)

SUBJECTS:

- \*Advertising and Solicitation
- \*Confidentiality
- \*Conflict of Interest
- \*Disqualification
- \*Law Firms
- \*Letterhead
- \*Sharing Office Space

ANNOTATION:

Two or more lawyers, each of whom is a sole practitioner, may affiliate so long as each attorney observes the requirements of Rules 1.6, 1.7, and 1.10, dealing respectively with confidentiality of information, conflict of interest, and imputed disqualification. (Rules 1.6; 1.7; 1.10)

Two or more sole practitioner lawyers who have affiliated may so note on their letterhead in accord with Rules 7.1 and 7.5, as long as the lawyers, in fact, form and carry out the affiliation. (Rules 7.1; 7.5)

QUESTION:

May two or more lawyers, each of whom is a sole practitioner, affiliate to enhance the level of professional services, to ensure coverage, and to provide specialization, all of

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which will result from such affiliation, while permitting each lawyer the control, flexibility and initiative that result from a sole practice? If so, may the lawyers use a letterhead bearing the following legend: "A, B & C, an affiliation of law firms," with each lawyer listed at the bottom of the letterhead as follows: "Attorney A," "Attorney B," and "Law Office of C."

SUMMARY ANSWER:

The New Hampshire Rules of Professional Conduct do not prohibit either the proposed affiliation or letterhead so long as each attorney observes the requirements of rules 1.6, 1.7 and 1.10, dealing respectively with confidentiality of information, conflict of interest, and imputed disqualification.

DISCUSSION:

No previous decision of the Ethics Committee has addressed the questions raised by this inquiry. Two rules limit law firm and attorney designations. They are rules 7.1 and 7.5. The pertinent provisions of each rule are:

Rule 7.1: A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered in light of the circumstances, not materially misleading . . .

Rule 7.5(a): A lawyer shall not use a firm name letterhead or other designation that violates Rule 7.1 . . .

\* \* \*

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Neither rule 7.1 nor 7.5 prohibits the affiliation and letterhead legend proposed here so long as the three lawyers, in fact, form and carry out the affiliation.

The Ethics Committee's interpretation of these two rules is consistent with a decision issued by the American Bar Association, Committee on Ethics and Professional Responsibility in 1984. In Formal Opinion 84-351, the ABA committee approved a letterhead that listed another law firm as an "affiliated" firm. In doing so, the committee

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underscored the requirement that an "affiliated" designation "must be consistent with the actual relationship." Opinion at 3. Continuing, it stated:

An "affiliated" . . . law firm would normally mean a firm that is closely associated or connected with the other lawyer or firm in an ongoing and regular relationship.

\* \* \*

The relationship must be close and regular, continuing and semi-permanent, and not merely that of forwarder receiver of legal business. The "affiliated" . . . firm must be available to the other firm and its clients for consultation and advice.

Opinion at 4. It also stated that if there are limitations on the legal services to be performed by any member of the affiliation, "[m]ore descriptive language may be required to explain the precise relationship between the firms and to avoid misleading clients and others." Opinion at 4.

The affiliation of law firms proposed by this inquiry must observe the rules on confidentiality of information, conflict of interest, and imputed disqualification imposed by rules 1.6, 1.7 and 1.10. See also Opinion at 5-7. Thus, all clients of the three individual firms must be advised of the affiliation, the fact that confidential information will be shared among the three lawyers, but that each of the lawyers will not represent any client that poses a conflict of interest with any client of the affiliated firms.