

28**LETTERHEAD**

Revised April 28, 1973.

Revised July 24, 1993.

Syllabus

When a member of a law firm is elected or appointed to a judicial, legislative, or public executive or administrative office for any substantial period of time during which he is not actively and regularly practicing law as a member of the firm, he may not properly hold himself out as a member of the firm, and his name shall not be used in the firm name, on the firm letterhead, in any firm identification placard or in professional notices of the firm.

Facts

An attorney who is a member of a law firm is elected or appointed to a judicial, legislative, or public executive or administrative office for a substantial period of time during which he will not actively and regularly practice law with his firm. Should he, prior to assuming the duties of his public office, resign from his firm, and should his name be removed from the firm name, from the firm letterhead and identification placards, and professional notices of the firm?

Opinion

A lawyer should not hold himself out as offering legal counsel to the public if he is not actively and regularly practicing law. Service in a judicial, legislative, or public executive or administrative office which, for a substantial period of time, prevents the lawyer from actively practicing law also prevents him from holding himself out as a practicing lawyer. Whether he has the right to practice law concurrently while holding that office or not, his name should be removed from the firm name, and he should not be identified as a past or present member of the firm. Canon 2, Code of Professional Responsibility; Ethical Consideration 2-12; Disciplinary Rule 2-102(B).

If he does have the right to practice law concurrently while holding the public office, he may continue to be identified with his firm so long as he actively continues to practice law as a member thereof. Rule 7.5(e) and comment to Rule 7.5 of the Colorado Rules of Professional Conduct; Ethical Consideration 2-12.

But if the public office requires substantially all of his time, he cannot actively engage in the practice of law to the extent necessary to avoid misleading persons with whom he deals, and therefore he must not hold himself out as a partner of a law firm, whether he remains a partner or not. Rule 7.5(e) and comment to Rule 7.5 of the Colorado Rules of Professional Conduct; Ethical Considerations 2-12 and 2-13; Disciplinary Rules 2-102(B) and (C). If he is not in fact a partner, the prohibition is clear. Rule 7.5(e) and comment to Rule 7.5 of the Colorado Rules of Professional Conduct; Ethical Consideration 2-13 and Disciplinary Rule 2-102(C). Even if he remains a partner, where permitted by law, the use of his name in the firm name or in any connection with the firm, on its letterhead or otherwise, is prohibited. Rule 7.5(e) and comment to Rule 7.5 of the Colorado Rules of Professional Conduct; Ethical Consideration 2-12 and Disciplinary Rules 2-102(B) and (E).

It should be observed that an attorney who retains membership in his firm after assuming a government office may thereby disqualify his firm, for either statutory or ethical reasons, from representing the interests of clients before certain courts, legislative or executive bodies, or administrative agencies.