

Practice Pointer: Using “& Associates” in a Firm’s Name

by Leslie J. Randolph

Firm names are trade names. They are protected commercial speech. There are, however, permissible restrictions on firm names. The restrictions are delimited in Rule 7.5 of the Rules of Professional Conduct [RPC]. Rule 7.5 expressly addresses trade name usage, law firm names in multi-jurisdictional practice, use of names of lawyers who are holding public office and firm names which imply various associations between firm members. The comments to Rule 7.5 provide additional guidance concerning trade names, common examples of which are use of deceased partner names, which is permissible, and use of joint names in office sharing situations, which is not.

Overriding all Rule 7.5 prohibitions and guidelines is the first statement in the rule: “A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1.”¹ Rule 7.1 begins: “[a] lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services.”² It is impermissible and misleading to include in a firm name information which inaccurately portrays the type of service a law firm provides or inaccurately identifies the lawyers in the firm. This article will focus on one example of the latter, the sole practitioner who uses the firm name, “Solo & Associates.” May a sole practitioner use this firm designation without violating the RPC? No.

Mr. and Ms. Solo have a number of explanations for using “& Associates:” “Well, I used to have another attorney in my office and even though she left, I don’t want to spend the money changing my firm name, letterhead, business cards and shingle,” (pure economics). Or, “I’m planning on having another attorney in my office in the future,” (at least aspirational). Or, “it’s okay because I tell all prospective clients as soon as we start to talk that I’m a solo,” (objective met, client walked in). Or, “I share office space with other attorneys,” (could be convenience). Or even, “I’m the only attorney in my office but I have paralegals and other support people,” (ignores or misapprehends the definition of “associates”).

The solos offering these explanations are generally quick to defend against suggestions that use of “& Associates” misleads the public. They are wrong. Very few admit to using the designation to make their firms look bigger and more attractive to clients. But, it is

this reality that misleads the public and proscribes its use under Rule 7.5.

This conclusion is supported by Utah’s Ethics Advisory Opinion Committee and the ABA Committee on Ethics and Professional Responsibility. At least one state supreme court agrees.

A 1994 opinion of Utah’s Ethics Advisory Opinion Committee states, “a sole practitioner who uses the name ‘Doe & Associates’ implies that attorneys other than Doe are in practice in the firm. This would be misleading to the public as a ‘material misrepresentation of fact’ under Rule 7.1(a) and, therefore, would be in violation of Rule 7.5.”³ The Committee concludes: “a sole practitioner may not use a firm name of the type ‘Doe & Associates’ if he has no associated attorneys, even if the firm formerly had such associates or employs one or more ‘associated non-lawyers such as paralegals or investigators.’”⁴ Utah’s Ethics Advisory Opinion Committee does not define “associates” in Opinion 138.

In Formal Opinion 310, dated June 20, 1963 the ABA Committee on Ethics and Professional Responsibility addressed appropriate uses of the designation “& Associates” and in doing so defined “associates” as that term is used in law practice. The ABA Committee concluded “& Associates” is properly used for “attorneys who are employed by another attorney or law firm and do no share responsibility or liability for the acts of the firm.”⁵ It defines the term associates as “a junior non-partner lawyer, regularly employed by the firm.”⁶ The opinion expressly eliminates from the “associates” category attorneys who are partners and share the responsibility and liability of each other and attorneys who simply share office space and some costs of practice. The ABA Committee would find improper a sole practitioner’s use of “& Associates” in his or her firm name.

The Florida Supreme Court agrees. A member of the Florida Bar practiced law under the name “The Law Team, Fetterman and

LESLIE RANDOLPH is an Assistant Counsel in the Utah State Bar’s Office of Professional Conduct. The views expressed in this article are not necessarily those of the OPC or the Utah State Bar

Associates.” When the firm was established Fetterman employed two attorneys. Thereafter he always employed at least one attorney. According to the court, the term “associates” has a precise meaning in the legal profession context. It means “a salaried lawyer-employee who is not a partner of the firm.”⁷ Therefore, it concludes, so long as the firm employs even one lawyer employee the designation “& Associates” does not mislead the public.⁸ The court also expressly excludes from its “associates” definition paralegals, secretaries, non-lawyer law clerks, office managers or other support personnel.

It also is likely the United States Supreme Court would uphold a construction of Rules 7.1 and 7.5 which prohibits using the firm name “Solo & Associates.” The Court has not addressed trade names used by law firms, but it has held that trade names used in the optometric business, while constitutionally protected as commercial free speech, are appropriately regulated to avoid misleading or deceiving the public.⁹

No explanation or excuse offered by a sole practitioner using “& Associates” in the law firm’s name eliminates the suggestion to the public that the solo is not a solo at all. Such a suggestion by a sole practitioner misleads the public and violates Rules 7.1 and 7.5 of the RPC.

If you practice as a solo but use “& Associates” in your firm name and you have an explanation or reason you believe to be a defense to violating Rules 7.1 and 7.5 of the RPC, you might want to call the Ethics Hotline (531-9110) to discuss your view with an OPC attorney.

¹ Rule 7.5(a), Rules of Professional Conduct.

² Rule 7.1, Rules of Professional Conduct.

³ Utah State Bar Ethics Advisory Op. Comm., Op. No. 138 (1994).

⁴ Utah State Bar Ethics Advisory Op. Comm., Op. No. 138 (1994).

⁵ ABA Comm. on Ethics and Professional Responsibility, Formal Op. 310 (1963).

⁶ ABA Comm. on Ethics and Professional Responsibility, Formal Op. 90-357 at 3 (1990) (quoting ABA Comm. on Ethics and Professional Responsibility, Formal Op. 330 (1972)).

⁷ *Florida Bar v. Fetterman*, 439 So.2d 835, 838 (Florida 1983).

⁸ At least one local bar association would find use of “& Associates” permissible only if the named lawyer employs *two or more lawyers*. See D.C. Bar Assoc., Legal Ethics Comm., Op. No. 189 (1988).

⁹ See *Friedman v. Rogers*, 440 U.S. 1 (1979).