

## Utah Ethics Opinions

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Utah State Bar

Ethics Advisory Opinion Committee

Opinion No. 138

Approved January 27, 1994

**Issue:** May a currently practicing sole practitioner who formerly had associates or junior partners continue to use the firm name that includes the sole practitioner's name followed by "& Associates"?

**Opinion:** A lawyer may not use "& Associates" as part of a firm name where no attorney associates are currently employed by that firm.

**Analysis:** Rule 7.5(a) of the Utah Rules of Professional Conduct provides, "A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.1." Rule 7.1 provides:

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 as a whole not materially misleading;

(b) Is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or

(c) Compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

Also, Rule 7.5(a) provides that a lawyer in private practice may use a trade name that does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1. In addition, Rule 7.5(d) provides: "Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact."

A private firm may use a trade name such as the "ABC Legal Clinic." A firm name that includes the name of a

deceased partner is also considered a trade name and is permitted. (fn1) In some circumstances, "Doe & Associates" could also be considered a permissible trade name. However, there are limitations. It is, for example, misleading and improper to use the name of a living lawyer who is not presently or was not previously associated with the firm or a predecessor of the firm.

The official comment to Rule 7.5 also points out that lawyers sharing office facilities who are not actual partners may not denominate themselves as "Doe & Jones," falsely suggesting a partnership in the practice of law. Likewise, 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.

Could the term "associates" in a firm name refer to support staff employed by the sole practitioner? No. Under Rule 7.5, the term "associates" in a firm name is limited to lawyer employees and not nonprofessional staff that the firm may employ.

Other jurisdictions that have considered this issue have uniformly disapproved its use. The District of Columbia Bar Association allows use of a firm name "John Doe and Associates" only if the firm normally employs two or more associates. (fn2) Similarly, Florida, Philadelphia and Washington (state) have barred the use of the term "Associates" in a firm name in the case of a sole practitioner's practice. (fn3)

Therefore, 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" nonlawyers such as paralegals or investigators.

## Footnotes

1. Rules of Professional Conduct 7.5, cmt.

2. D.C. Bar Assoc., Legal Ethics Comm. Op. No. 189 (1988), ABA/BNA Lawyers' Manual on Professional Conduct 901:2309.

3. Fla. Bar, Professional Ethics Comm. Op. 86-1 (1986), ABA/BNA Lawyers' Manual on Professional Conduct 901:2501; Philadelphia [Pa.] Bar Assoc., Professional Guidance Comm., Op. 86-97 (1986), ABA/BNA Lawyers' Manual on Professional Conduct 901:7506-07; Wash. State Bar Assoc., Rules of Professional Conduct Comm., Op. No. 178 (1984), ABA/BNA Lawyers' Manual on Professional

Conduct 801:8902-03.

**Rules Cited:**

**7.17.5**