

Ethics Advisory Opinion Committee
Opinion Number 18-01
Issued January 8, 2018

Issue

1. May a firm name continue to include the name of a founding partner who is 1) an elected legislator in the part-time state legislature and 2) engages in very little legal work but has not formally retired?

Opinion

Background

2. The founding partner of a law firm established decades ago is the first partner listed in the firm name. The founding partner also serves in as an elected public official in Utah's part-time legislature. The founding partner is of an age eligible for retirement but has not formally retired, although he does very little legal work for clients.

Analysis

3. Rule 7.5(c) provides that "The name of a lawyer holding public office shall not be used in the name of a law firm, or in communications in its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm."
4. The question of whether an attorney is "actively and regularly practicing" law with a firm is a factual one.
5. Where a lawyer is elected to full-time public office, the time demands of that service preclude the active and regular practice of law over a substantial period of time, and thus, the inclusion of the lawyer's name in the firm name or in communications on its behalf such as in letterhead. See, e.g., Professional Ethics of the Florida Bar, Opinion 70-64, February 22, 1971 (opining that "An attorney who is elected to Congress is considered no longer actively and regularly practicing").
6. The Utah State legislature is in session for seven consecutive weeks during a year. Seven weeks is not a period of time substantial enough to require a legislator who is also a lawyer to remove his name from his law firm's name or other firm communications, even if he is not actively practicing law during the seven weeks of the legislative session. There is no violation of Rule 7.5(c) when the part-time legislator's name remains part of the firm name during the seven week legislative session, provided he is "actively and regularly practicing with the firm" during the other 45 weeks of the year.
7. If the lawyer/legislator is not "actively and regularly practicing with the firm" during the other 45 weeks of the year, additional questions arise under Rule 7.5(a). Rule 7.5(a)

states “A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1.”

8. In relevant part, Rule 7.1 provides that:

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 or unreasonable expectation about results the lawyer can achieve or has achieved

9. When a lawyer is no longer actively and regularly practicing law, including her name in the firm name may be a misleading communication about the lawyer or the lawyer's services. Including the lawyer's name in the firm name or law firm communications such as letterhead implies that she is available to provide legal services to clients when as a factual matter she is not. Comment 1 to Rule 7.5 allows a firm name to include “the names of deceased members where there has been a continuing succession in the firm's identity” but makes no mention of the name of a retired member, an individual who continues to be affiliated with the firm but whose status may have changed from member to non-member, or of a living individual who is no longer actively engaged in the practice of law.

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11. 4838-7215-7018, v. 1