

Utah Ethics Opinions

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UTAH STATE BAR

Ethics Advisory Opinion Committee

Opinion No. 01-07

Issued August 29, 2001

¶ 1. **Issue:** Is it a violation of the ethical rules for an attorney or law firm to use trade names such as "Legal Center for the Wrongfully Accused" or "Legal Center for Victims of Domestic Violence" in selected court pleadings?

¶ 2. **Opinion:** It is not a violation of the ethical rules for an attorney or law firm to use trade names such as "Legal Center for the Wrongfully Accused" or "Legal Center for Victims of Domestic Violence" so long as the organization represents clients who claim to be in the indicated categories and provided the name is uniformly used for all such representation. Selective use of such trade names for some clients in the indicated categories but not others would violate Utah Rule of Professional Conduct 7.1(a).

¶ 3. **Facts:** A law firm desires to use the name "Legal Center for the Wrongfully Accused" in selected pleadings "in appropriate circumstances." The law firm does not intend to use the trade name in advertising or in every pleading filed with a court. Use of the name will be limited to domestic violence cases, and will be used only in circumstances where the law firm deems it appropriate. The law firm proposes to use this trade name in response to the use by a public or charitable legal services organization designated "Legal Center for the Victims of Domestic Violence."

¶ 4. **Applicable Rules of Professional Conduct:** Rule 7.5(a) of the Utah Rules of Professional Conduct states:

A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it 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.

¶ 5. Rule 7.1 states:

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.

¶ 6. **Analysis:** Rule 7.5(a) expressly authorizes a lawyer's use of trade names provided certain conditions are met. Use of trade names can assist the public in the selection of an attorney. The Committee is of the opinion that a law firm's use of the trade name "Legal Center for the Wrongfully Accused" would satisfy the requirements of Rule 7.5(a) provided the law firm actually represents clients accused of unlawful conduct and provided the firm uses the name uniformly in all cases in which the firm's client is accused of unlawful conduct. The law firm may not use the trade name in some "unlawful conduct" cases but not others. The same analysis applies to the trade name "Legal Center for Victims of Domestic Violence."

¶ 7. The name "Legal Center for the Wrongfully Accused" does not imply any connection with any government agency or with a public or charitable legal services organization. The trade name therefore does not implicate this part of Rule 7.5. The name "Legal Center for Victims of Domestic Violence" is used by a public or charitable legal services organization, so its use of the name would not implicate this part of Rule 7.5

¶ 8. Use of a trade name is not permitted if it makes a false or misleading communication about the lawyer or the lawyer's services. (fn1) Rule 7.1 provides three situations in which a trade name (or other communication about a lawyer's services) may be misleading. Subdivisions (b) and (c) of that Rule are not implicated here.

¶ 9. Rule 7.1(a) provides that a communication about a lawyer's services is false or misleading if it "contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading." Consistent and uniform use of the trade name "Legal Center for the Wrongfully Accused" in all alleged "unlawful conduct" cases is not likely to mislead anyone regarding the nature of legal services provided by the law firm. Furthermore, members of the judiciary, juries

and the community are not likely to be misled into believing that a person's cause is or is not just simply because that person is represented by a law firm that calls itself the "Legal Center for the Wrongfully Accused." By virtue of the simple fact of representation, the judiciary, juries and the community expect the lawyer to advocate that her client's claim or defense is just and proper. Obviously, the same analysis applies to the name "Legal Center for Victims of Domestic Violence." Judges, juries and the public are unlikely to be persuaded that a defendant is in fact guilty of perpetrating domestic violence on the claimant simply because the claimant's lawyer is from the "Legal Center for Victims of Domestic Violence," especially if the lawyer uses that name in all matters relating to domestic violence" (fn2)

¶ 10. Selective use of the trade names in question, however, opens the door to abuses that could intentionally or unintentionally mislead others. By using the name "Legal Center for the Wrongfully Accused" only in limited situations where the law firm deems it "appropriate," the law firm affirmatively represents that some of its clients are "wrongfully accused," while others are not. By drawing this distinction, the law firm signals to others the law firm's judgment that certain clients are "guilty" and others are not. (fn3) This practice would easily open the door for the law firm to materially mislead others into believing that a client is "wrongfully accused," because the law firm has made it known that it will not use the name unless it believes the client is in fact "wrongfully accused."

¶ 11. The same danger does not exist if the law firm uses the trade name uniformly in all aspects of the firm's "unlawful conduct" practice, including the firm name, letterhead, business cards, office sign, fee contracts, all pleadings, and so forth. If the law firm were to use the name uniformly in all cases in which it represents a client accused of wrongful conduct, there would be little or no danger that others would be misled or falsely persuaded of the client's guilt or innocence simply because of the name. While a firm may use the name "Legal Centers for the Wrongfully Accused" uniformly in all matters pertaining to alleged wrongful conduct, the firm would not have to use that name while providing other unrelated types of legal services, such as drafting a will or contract. The same analysis applies to the name "Legal Center for Victims of Domestic Violence."

¶ 12. The Committee notes that former Disciplinary Rule DR 2-102(A) provided that "[a] lawyer . . . shall not use . . . professional cards . . . letterheads, or similar notices or devices, [except] . . . if they are in dignified form." (fn4) If this Committee were called upon to apply the former Disciplinary Rule, it might reach a different result. The comment to our current Rule 7.2, however, expressly provides, "Questions of effectiveness and taste in advertising are matters of speculation and subjective

judgment." That statement certainly applies to the situation addressed in this opinion. While some people might find the trade name "Legal Center for the Wrongfully Accused" offensive, others are likely to believe that such a center serves a valuable and laudable purpose. It is also likely that there are differing opinions as to whether the name "Legal Center for Victims of Domestic Violence" is a dignified or tasteful trade name. Our Rules do not prohibit trade names that otherwise comply with Rules 7.1 and 7.5 simply because certain segments of the community might find the name to be in poor taste. (fn5)

¶ 13. Conclusion: A legal services organization may use a trade name such as "Legal Center for the Wrongfully Accused" or "Legal Center for Victims of Domestic Violence" if it actually represents clients who claim to fit the indicated categories. The trade name must be used uniformly in all aspects of the organization's practice relating to such representation. The organization may not use the trade name selectively for some clients in the indicated categories and not others.

Footnotes

1. Utah Rules of Professional Conduct 7.1 (2001).

2. This is not a case where a law firm is deliberately misrepresenting the nature of services it provides or the identity of the persons providing the services. *See, e.g., Medina County Bar Ass'n v. Grieselhuber*, 678 N.E.2d 535 (Ohio 1997) (sole practitioner's holding himself out as "Body Injury Legal Centers" falsely suggested he had multiple legal centers).

3. Such selective use of a trade name may convey information about the client that might be a violation of Utah Rule of Professional Conduct 1.6, *Confidentiality of Information*.

4. *See* Utah Rules of Professional Conduct 7.5, cmt.

5. *See also, e.g., Philadelphia Bar Ass'n Professional Guidance Comm., Op. 98-17* (1998) (permitting use of the trade name "Medical Malpractice Trial Attorneys, Inc." if law firm actually handles medical malpractice cases through trial); *In re Shannon*, 638 P.2d 482 (Ore. 1982) (permitting use of the trade name "Shannon and Johnson's Hollywood Law Center").

Rule Cited:

7.1(a)