

Ethics Advisory Opinion Committee
Opinion Number 18-01
Issued June 11, 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

2. A firm name may continue to include the name of a partner elected to the part-time state legislature, provided that the lawyer who is a legislator actively and regularly engages in law practice when the legislature is not in session. Where a lawyer who is a legislator no longer actively and regularly engages in law practice, but spends his out-of-session working time almost exclusively on legislative matters, the firm name may not include the lawyer's name even as part of a trade name.

BACKGROUND

3. A partner in a law firm established decades ago is listed in the firm name. The founding partner also serves as an elected public official in Utah's part-time legislature. The partner does very little legal work for clients and focuses instead on legislative matters.

ANALYSIS

4. Rule 7.5(c) of the Utah Rules of Professional Conduct provides: "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." 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 or appointed 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., In re Riddle*, 700 N.E.2d 788, 794-95 (Ind. 1998) (lawyer who became full-time county prosecutor should have removed name from sign and stationery of private law office); Mont. Ethics Op. 001029 (2000) (full-time public officeholder may not continue to practice in "off-hours" and must remove name from firm's name); N.H. Ethics Op. 1988-9/22 (1989) (letterhead may not include name of former member appointed to public office or designate him "on leave of absence"); Florida Ethics Op. 70-64 (1971) (attorney elected to Congress is considered no longer "actively and regularly practicing").

6. The Utah 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 practicing law during that time, provided he is "actively and regularly practicing with the firm" during the other 45 weeks of the year.

7. If the lawyer who is a legislator is not "actively and regularly practicing with the firm" when the legislature is not in session, ethical concerns arise. The interaction among Rules 7.5(c), 7.5(a), and 7.1 of the Utah Rules of Professional Conduct recommend against continued inclusion of the lawyer who is a legislator's name in the firm name.

8. Rule 7.5(a) 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." Utah R. Prof. Cond. 7.5(a).

9. Rule 7.5(a) allows trade names under certain circumstances. A firm name may include “the names of deceased members where there has been a continuing succession in the firm’s identity.” Utah R. of Prof. Cond. 7.5 Cmt. [1]. Likewise, “[a] firm name that includes the name of a deceased partner is also considered a trade name and is permitted.” Utah Ethics Op. 138 (1994) (citing Comment to previous version of Rule 7.5). Utah’s earlier version of Rule 7.5(a) allowed a firm name to include the name of a retired partner. Utah Ethics Op. 38 (1977).

10. In relevant part, Rule 7.1 of the Utah Rules of Professional Conduct 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 or unreasonable expectation about results the lawyer can achieve or has achieved

11. If a trade name may include the name of a deceased or retired partner, may it also include the name of a lawyer who is a legislator who formally retains his status as a partner in the law firm and holds an active law license, but does not engage in the active and regular practice of law, instead focusing on legislative matters? No. How a lawyer spends his time—not her specific employment status—determines the truthfulness of the communication involving the firm name under Rule 7.1. *See, e.g.*, Utah Ethics Op. 04-03 (2004) (allowing a lawyer who works with at least two other attorneys, whatever their status, to use the term “& Associates” in the firm name, “provided the other lawyers regularly spend the majority of their working time on legal matters for the firm”); *see also* Utah Ethics Op. 138 (1994) (prohibiting a sole practitioner from using a firm name that included “& Associates” where no other lawyers currently worked with him).

12. When a firm name includes the name of a lawyer who is a legislator who is no longer actively and regularly practicing law but instead spends the majority of his working time on legislative matters, a facial violation of Rule 7.5(c) occurs, irrespective of whether the departure from active and regular law practice flows from a commitment to public office or other factors such as semi-retirement. Utah R. Prof. Cond. 7.5(c).

13. Rule 7.5(c) of the Utah Rules of Professional Conduct balances the interests in favor of allowing the lawyer who is a legislator's name to remain in the firm name, unless he fails to actively and regularly practice law for a substantial period of time. Where a lawyer who is a legislator has not actively and regularly practiced law for a substantial period of time and instead primarily engages in legislative matters during the hours he works, the balance of interests shifts. The lawyer who is a legislator no longer avails himself of the economic opportunity Rule 7.5(c) allows to encourage lawyers to engage in public service while maintaining their law practices. Moreover, the risk of misleading the public weighs against the lawyer who is a legislator's name remaining in the firm name. A trade name including the lawyer who is a legislator's name may mislead clients, implying a connection with the Utah Legislature and a concomitant unreasonable expectation about the results the law firm may be able to achieve or the influence that lawyer may bring to bear on their own or the firm's behalf. *See* N.H. Ethics Op. 1988-9/22 (1989) (letterhead may not include name of former member appointed to public office or designate him "on leave of absence"; notation could mislead clients to believe he wielded influence to firm's advantage).