

Ethics Advisory Opinion Committee
Ethics Opinion 2021-02
Issued April 15, 2021

ISSUES

1. Rule 7.1 of the Utah Rules of Professional Conduct was recently amended. What firm names are appropriate under the amended Rule 7.1?

OPINION

2. A firm can use a trade name, including the names of departed lawyers, provided the name is not false or misleading as defined in Rule 7.1 and the Comments to it.¹

DISCUSSION

3. In December 2020, the Utah Supreme Court amended the Utah Rules of Professional Conduct regarding communications concerning a lawyer's services. The Court deleted all previous rules and then incorporated communications concerning a lawyer's services into a new and single Rule 7.1.

4. The key concept in the amended Rule 7.1 is that communications regarding a lawyer's services must not be false or misleading.

5. With respect to the questions posed, a communication 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." Utah R. Prof. Cond. 7.1(a)(1).

¹ This is the second recent request for an ethics advisory opinion that has been submitted anonymously. The Ethics Advisory Opinion Committee ("EAOC") is charged with answering questions concerning the requesting attorney's conduct. The EAOC has chosen to answer this request because it appears to be a question that would assist the Bar as a whole. The fact that the EAOC has chosen to answer this request should not be interpreted as practice it will follow for future anonymous requests. Attorneys need to identify themselves when submitting requests.

6. The name of a firm is a communication to the public. Utah R. Prof. Cond. 7.1.

Comment [7] to Rule 7.1 provides:

Firm names, letterhead and professional designations are communications concerning a lawyer's services. A firm may be designated by the names of all or some of its current members, by the names of deceased or retired members where there has been a succession in the firm's identity or by a trade name if it is not false or misleading. A lawyer or law firm also may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

7. Further, Rule 7.1 precludes lawyers from representing that they are practicing together when they are not in a firm. Utah R. Prof. Cond. 7.1 cmt. [9].

8. The requestor asks under what conditions a firm may use the name of a deceased or departing member. Rule 7.1 treats using the name of a deceased member of a firm and a departing member of a firm somewhat differently. However, in both cases the underlying presumption is that a succession of law practice by members of the same firm continues. Utah R. Prof. Cond. 7.1 cmt. [7].

9. The use of a continuous name by Firm One may become a misrepresentation if the member departing from Firm One returns to the practice of law in Firm Two. In such a case, Firm One would be required to change names so as to avoid misrepresentation to the public that the departed member continues to practice law there rather than at Firm Two.

10. Specifically, the requestor posits a situation where a sole proprietor (Jane Doe) practices with associates under the name "Jane Doe and Associates." Jane wishes to retire and sell the firm to her associates. The name "Jane Doe and Associates" has acquired a positive

reputation in the community. Both Jane Doe and the purchasing lawyers wish to retain the name “Jane Doe and Associates” in order to increase the value of the firm and capitalize on the goodwill the firm has acquired over the years.

11. The purchasing lawyers may properly use “Jane Doe and Associates” as a trade name. Rule 7.1 allows the use of trade names that are not misleading. Utah R. Prof. Cond. 7.1 cmt. [7]. In the context of the question posed, the continuing use of the trade name would not be misleading because it contains the name of a former member. Rule 7.1 specifically allows this practice. Utah R. Prof. Cond. 7.1 cmt. [7].

12. If, however, Jane Doe returned to the practice of law in the same geographic area or in the same subject matter, then the name “Jane Doe and Associates” would become misleading.

13. A purchaser with no prior relationship with the firm could also use the trade name. Rule 1.17 allows the sale of the firm including “good will.” Rule 1.17 requires the selling lawyer to cease practicing in the same geographic area or in the same area of practice. This comports with the requirement under Rule 7.1 that the continuation name not be false or misleading. Utah R. Prof. Cond. 7.1 cmt. [4].

14. However, a trade name could be false or misleading under Rule 7.1. A solo practitioner may not use the name “Doe & Associates” if there are no longer any associates at the firm. Utah St. Bar Eth. Op. No. 138 (1994). However, a firm may use the moniker “& Associates” if there are attorneys “of counsel” or working on a contractual basis, provided the other lawyers regularly spend the majority of their working time on matters for the firm. Utah St. Bar Eth. Op. No. 04-03, 2004 WL 1304775 (2004). Similarly, a firm may use a trade name such as “Legal Center for the Wrongfully Accused” or “. . . for Victims of Domestic Violence”

provided the firm does represent clients who claim to be in the categories referenced. Utah St. Bar Eth. Op. No. 01-07, 2001 WL 1018895 (2001). *See also* Hazard, Hodes and Jarvis, 2019-1 Supplement at 59-12.2.

15. A trade name may also be deceptive if it contains the name of a political subdivision without a disclaimer that the law firm is not associated with the government. In such cases, a disclaimer of political connections would be appropriate. “The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.” Utah R. Prof. Cond. 7.1 cmt. [3].

16. The requestor asks a number of questions concerning ethical use of a lawyer’s name under the new “Sandbox” provisions of Rule 5.4(b). Utah R. Prof. Cond. 5.4(b). The Utah Supreme Court controls access to the Sandbox. We express no opinion as to the names of entities approved by the Supreme Court for access to the Sandbox.