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What's in a Name? Rules Governing Law Firm Names

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When I started practicing, law firm names often followed a predictable progression: as name partners retired, firms adjusted their names by moving the next most senior lawyer into the lead position and often added a more junior partner at the end. As law firms grew in size and geographic scope, however, that time-honored pattern began to ebb in favor of more constant and generally shorter firm names. In doing so, law firms were following economic trends that other businesses had long adopted to capitalize on “brand names.”

The rules governing law firm names have also evolved to reflect the changing nature of law practice and associated marketing. In this column, we'll first survey Oregon's rules for law firm names. We'll then look at how those rules apply to trade names and when lawyers retire, die or otherwise leave a firm.

The Rules

Oregon RPC 7.5 governs law firm names. RPC 7.5(a) sets the basic marker for law firm names by cross-referencing RPC 7.1, which requires truthfulness in all marketing communications—including law firm names. RPC 7.5(b) permits multi-state law firms to use the same firm name across jurisdictional boundaries. RPC 7.5(c) prohibits using the name of a lawyer holding public office “during any substantial period in which the lawyer is not

actively and regularly practicing with the firm.” Finally, RPC 7.5(d) allows lawyers to state that they are practicing in a firm only when that is accurate.

The emphasis on accuracy underlies each facet of the rule. OSB Formal Opinion 2005-109 (rev 2015), for example, concluded that under RPCs 7.5(a) and (b), an Oregon law firm could include the name of a Washington law firm alongside its own as an “associated office” because the two firms had a contractual relationship to handle work for each other in their respective states. By contrast, the lawyer in *In re Reed*, 21 DB Rptr 222 (Or 2007), was disciplined under RPC 7.5(d) for including the term “& Associates” after his name because he was a solo practitioner. OSB Formal Opinion 2005-12 (rev 2015) reaches a similar conclusion where lawyers are simply sharing office space rather than practicing as a single firm.

Oregon’s rule is patterned on an earlier ABA Model Rule and its Oregon predecessor, former DR 2-102. Importantly for lawyers whose practices take them beyond Oregon, the ABA in 2018 substantially revised the Model Rules on lawyer marketing. In that process, ABA Model Rule 7.5 on firm names was deleted in its entirety and the concepts moved to comments under ABA Model Rule 7.1—again reflecting the fundamental focus on truthfulness. Because Oregon does not have comments to our rules, we could not follow the ABA’s

structural change. Substantively, however, Oregon remains largely in sync with the ABA Model Rule comments on firm names.

Trade Names

Oregon RPC 7.5(a) specifically permits trade names:

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.

The Oregon Supreme Court in *In re Shannon*, 292 Or 339, 342, 638 P2d 482 (1982), concluded that the term “trade name” in the then-current professional rule was used in its general sense as an assumed name for a business.

Comment 5 to ABA Model Rule 7.1 is similar and finds that geographic trade names are also permitted as long as they do not suggest that they are a public legal aid organization. OSB Formal Opinion 2005-101 (rev 2016) takes this same approach with trade names based on practice areas.

Departed Lawyers

Lawyers included in a firm’s name will eventually depart the firm. When that occurs through retirement, OSB Formal Opinion 2005-169 (rev 2016) finds that generally a firm may still use a retired lawyer’s name in the firm name as long as the retired lawyer is not practicing elsewhere. Formal Opinion 2005-169

also notes that firms have long continued to use the names of deceased lawyers in firm names. Both situations implicitly rely on the retired or deceased lawyer's association with the firm.

The situation is more nuanced, however, when a lawyer has simply left a firm. If the lawyer has a continuing connection to the firm, such as an "of counsel" relationship (which is surveyed in OSB Formal Opinion 2005-155 (rev 2014), then the lawyer's name may remain in the firm name. The OSB Ethical Oregon Lawyer (at 2-40), however, reasons that if one of the exceptions discussed above does not apply, "a lawyer is precluded from allowing his or her name to remain in the name of a law firm or to be used by the firm if the lawyer is not actively and regularly engaged in the practice of law as a member of the firm." The same passage goes on: "Other members of the firm are precluded from using the absent lawyer's name in its letterhead or professional notices." From either perspective, the reason is that leaving the name of a lawyer who has no continuing connection to the firm may be misleading under RPC 7.1.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP handles professional responsibility, risk management and attorney-client privilege issues for lawyers, law firms and corporate and governmental legal departments throughout the Northwest. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark has served on the Oregon State Bar Legal Ethics Committee and is a member of the Idaho State Bar Section on Professionalism & Ethics. Mark writes the Ethics Focus column for the Multnomah (Portland) Bar's *Multnomah Lawyer*, the Ethics & the Law column for the WSBA *Bar News* and is a regular contributor on legal ethics to the WSBA *NWSidebar* blog. Mark is the editor-in-chief and a contributing author for the WSBA *Legal Ethics Deskbook* and a principal editor and contributing author for the OSB *Ethical Oregon Lawyer* and the WSBA *Law of Lawyering in Washington*. Before co-founding Fucile & Reising LLP in 2005, Mark was a partner and in-house ethics counsel for a large Northwest regional firm. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. Mark is admitted in Oregon, Washington, Idaho, Alaska and the District of Columbia. He is a graduate of the UCLA School of Law. Mark's telephone and email are 503.224.4895 and Mark@frllp.com.