

LAW FIRM NAMING RIGHTS

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"What's in a name? That which we call a rose by any other name would smell as sweet."
~From "Romeo and Juliet" (Act II, scene ii)

We choose names for our children that reflect the kind of people we hope they will be. We sell the rights to name buildings and events to help pay for them. We give nicknames to our friends to better describe who they are.

As lawyers we give names to the law firms where we practice. The name may be as prosaic as a list of the lawyers working there, or it may be an attempt to describe the nature of the law firm or its practice. However, unlike the naming of other things, the naming of a law firm is subject to the Minnesota Rules of Professional Conduct (MRPC).

Be true

Rule 7.5 of the MRPC provides that a lawyer "shall not use a firm name, letterhead or other professional designation that violates Rule 7.1." Rule 7.1 prohibits a lawyer from making a false or misleading communication about the lawyer or the lawyer's services.

Communications are considered false or misleading if they contain a material misrepresentation of fact or law or omit a fact necessary to make the statement considered as a whole not materially misleading.

If new lawyers Larry Lawyer and Annie Attorney form a partnership there are no ethical issues involved with their decision to call their firm "Lawyer & Attorney." However, Larry and Annie are not limited to using their names to designate their firm.

Rule 7.5(a) provides that "a trade name may be used by a lawyer in private practice." So, for example, Larry and Annie may decide to call themselves the Edina Area Law Firm. The use of a trade name is acceptable so long as it is not misleading and the lawyers comply with statutory requirements. (See "Is your firm required to file with the OLPR?" in the Aug. 19, 2002, edition of *Minnesota Lawyer*.) Presuming that Larry and Annie are actually practicing in, or have some connection with the Edina area, there would be nothing misleading about the use of such a name.

Should Larry and Annie decide, however, to name their firm "The City of Edina Law Firm," such a

designation would be a violation of the rules of professional conduct.

The rules provide that a trade name may not be used if it implies a connection with a government agency or with a public or charitable legal services organization. The use of the name “City of Edina Law Firm” suggests a connection with the city of Edina that does not exist.

Suppose that Larry and Annie decide to open a second office in Fargo, N.D. Annie is admitted to practice in both Minnesota and North Dakota, but Larry is admitted only in Minnesota. Is the use of the name “Lawyer & Attorney” misleading?

Absent additional action by Larry and Annie the answer is yes. The firm name is misleading in North Dakota because it implies that Annie and Larry are both licensed to practice law in that state.

Rule 7.5(b) permits law firms with offices in more than one jurisdiction to use the same name in each jurisdiction. However, “the firm shall indicate the jurisdictional limitations on those not licensed in the jurisdiction where the office is located.” Therefore, the firm name could only be used if the limitations on Larry’s ability to practice in North Dakota were disclosed. (For example, an asterisk could be placed next to Larry’s name with the explanation “licensed only in Minnesota.”).

Political ties

Suppose further that because of all the spare time on his hands (not being licensed in North Dakota), Larry decides to run for office in Minnesota. Larry decides that because he’s not a former professional wrestler he’s not qualified for governor, but a seat in the Legislature would suit him just fine.

Since the Minnesota Legislature is a part-time legislature, and Larry would still practice law, he and Annie could continue to use the name Lawyer & Attorney. However, if after a few years Larry decides that he’s really more suited for the national stage and is elected to Congress, Annie would likely have to change the name of the firm.

Rule 7.5(c) provides that “the name of a lawyer holding a public office shall not be used in the name of a law firm or in communications on its behalf, during a substantial period in which the lawyer is not actively and regularly practicing law with the firm.” Larry’s duties as a congressman would prevent him from having an active practice.

Be clear

The Director’s Office occasionally receives inquiries from lawyers regarding the use of the names of paralegals or recent law school graduates on their law firm letterhead.

For example, a firm hires a young lawyer in July with the idea that he will perform law clerk

activities until he is admitted in October. The firm is confident that he will pass the bar exam and they are about to order new letterhead. May they add his name to the letterhead now?

There is nothing in the Minnesota Rules of Professional Conduct prohibiting the names of nonlawyers from appearing on the letterhead. However, to simply place the clerk's name on the letterhead without further information would be misleading. The assumption of people reading the letterhead is that the individuals listed are lawyers. Therefore, the firm would either have to wait until the clerk is admitted to add his name or indicate on the letterhead that he is a law clerk.

Likewise, there is nothing prohibiting a lawyer from putting the name of a paralegal on the firm letterhead. However, there would have to be an indication that the person listed is a paralegal.

The law firm of Lawyer & Attorney by any other name would be the same firm. However, if that name is misleading it is not much ado about nothing but rather a potential ethical problem for the lawyers involved.