

REVISITING LAW FIRM NAMES

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Reprinted from *Bench & Bar of Minnesota* (October 2014)

In June 2009, the Lawyers Professional Responsibility Board issued Opinion No. 20, entitled "Use of the Word 'Associates' in a Law Firm Name."^{Ftn 1} The opinion limited the use of the term "& Associates" to situations in which a law firm actually had at least two such individuals in addition to any lawyer in the firm name. If that was not a true statement then the firm name was to be considered misleading under Rules 7.1 and 7.5, Minnesota Rules of Professional Conduct (MRPC).^{Ftn 2} Such an opinion was consistent with the majority of other states' opinions; moreover, as the ABA's Annotated Model Rules of Professional Conduct states, "it is misleading for a sole practitioner to state or imply that she is practicing with other lawyers." Obviously, the intent is that a possible consumer of legal services, who wants to hire a firm with sufficient size and resources to handle some particular problem, should not be misled into contacting a firm that does not, in fact, meet their requirements.

The Lawyers Board opinion stated that enforcement was to be deferred until January 1, 2010, giving Minnesota lawyers what was perceived to be sufficient time to amend the name of their firm, if not in compliance, and alter various advertising uses of the firm's name. In the now almost five years since enforcement of Opinion No. 20 was to commence, few lawyers have been disciplined, even privately, for having a misleading law firm name. However commendable this may seem, to be honest, enforcement has relied mostly on complaints that specifically identify a law firm's name as an issue; rarely, if ever, has the Office *sua sponte* made an issue of a firm's name. Perhaps as a result, and as any review of law firm listings would reveal, there remain solo practitioners who continue to identify their firm as "Lawyer X & Associates," despite the fact that Ms. X is the only lawyer in the firm.

Disparate Approaches

The National Organization of Bar Counsel (NOBC) is the principal organization for lawyers who work in the lawyer disciplinary system as "bar counsel": the lawyers

who prosecute lawyer discipline matters and often advise lawyers on avoiding ethics problems. The NOBC, like many such entities, maintains a listserv for its members, through which questions can be posted and ideas and information sought and exchanged.Ftn 3

Recently this listserv included a question, and the resulting “email string” of answers and comments, about the use and misleading use of phrases such as “& Associates” and related methods of implying that a law firm is somehow more extensive than it really is. The inquiry was not strictly limited to law firm names, as it included concerns about the use of plural terms on lawyers’ websites or in other forms of advertising (“our attorneys,” etc.). Some jurisdictions are only now considering adopting a rule or formal opinion on the topic, and are seeking input from jurisdictions that already have done so, sometimes many years ago. The topic remains of viable interest.

I’ve noted before that different jurisdictions take quite disparate approaches to regulating lawyer advertising and all related forms of communications about a lawyer’s services. Some states take a very “hands off” approach; others believe it necessary to have in place clear restrictions on false or misleading statements. Potentially misleading law firm names and descriptions of a firm’s size are issues that different jurisdictions regulate with varying degrees of scrutiny. Due to the overall civility of lawyer advertising and the general good taste exhibited in ads and websites in Minnesota, we have at least leaned more towards the “hands off” end of the spectrum. But there are limits even here.

Public Discipline in Response

The comment to Lawyers Board Opinion No. 20 cited to several public discipline decisions that predated 2009. Among them was *In re Mitchell*.Ftn 4 Mitchell was a solo practitioner in Greenville, S.C., where I happen to have relatives. Initially, he was “cautioned” (presumably akin to being privately admonished in Minnesota) for using the firm name, “Theo Mitchell & Associates,” and for using “attorneys and counselors at law” in other communications. When Mitchell did not alter his firm name or terminate referring to his firm in the plural, he was publicly reprimanded. South Carolina’s disciplinary counsel indicates that South Carolina lawyers continue to be “cautioned” about using phrases such as “& Associates,” despite the *Mitchell* decision.Ftn 5 More recently, an attorney in Ohio was suspended for two years for, among other violations, holding himself out as “McCord, Pryor & Associates,” when in fact he and the other lawyer were merely office-sharers and there were no other attorneys in the office.Ftn 6 This not only was misleading as to the size of the entity, but also violated Ohio’s equivalent of Minnesota’s Rule 7.5(d), MRPC, which states that

lawyers may state or imply that they practice in a partnership or other organization only when that is the fact. An office-sharing arrangement does not meet this standard. As indicated, strict application of the rules and opinion has not been the norm in Minnesota. To date, no attorney has been publicly disciplined for violating Opinion No. 20 (that is, Rules 7.1 and/or 7.5, MRPC), even when the violation occurred in combination with other misconduct.

Other Responses

Several states or bar associations have issued formal or informal opinions on the topic, as Minnesota has. The extent of compliance and enforcement can be difficult to ascertain in most such situations. Some disciplinary counsel have indicated that they, apparently informally, “tell” lawyers to change their law firm name or pluralized advertising content. This seems to imply an expectation that voluntary compliance will resolve the issue without a formal disciplinary investigation. Minnesota’s Lawyers Board has never authorized such an informal approach. The six-month enforcement grace period presumably was meant to provide such an opportunity.

So, where do we go from here? After five years, it does not seem unfair to expect Minnesota lawyers to follow the board’s opinion. Certainly, the board reasonably should expect its director and staff to apply the board’s official interpretation of Rules 7.1 and 7.5 as directed. Thus, a slightly more proactive approach may now be in order—at least to the extent that a complaint or investigation that reveals the possible use of a misleading law firm name or other content will result in inquiry and discipline where justified, even if this was not alleged in the complaint. Rather than giving informal cautions to lawyers or law firms to revise their firm names, we believe all Minnesota lawyers should consider this to be their one warning.

Notes

1 Available at <http://lprb.mncourts.gov/rules/LPRBOpinions/Opinion%2020.pdf>. See also, Cole, “Lawyers Board Proposed Opinion No. 20,” *Bench & Bar of Minnesota* (March 2009).

2 Rule 7.1, MRPC, prohibits false or misleading statements in lawyer advertisements; Rule 7.5 applies that rule’s standard to law firm names.

3 See, Cole, “We Are Not Alone,” *Bench & Bar of Minnesota* (November 2007).

4 *In re Mitchell*, 674 S.E.2d 634 (S.C. 2005).

5 Email from Barbara Seymour, Deputy Disciplinary Counsel, Supreme Court of South Carolina, 09/11/2014.

6 *Disciplinary Counsel v. McCord*, 905 N.E.2d 1182 (Ohio 2009).