

OPINION NO. 90-01
February 16, 1990

FACTS:

A sole practitioner who has in the past employed associate attorneys inquires about the ethical propriety of allowing his corporate name to remain as "X and Associates" in the event that he should hire associate attorneys in the future.

QUESTIONS:

1. Whether the firm name "X and Associates" is ethically permissible;
2. Whether the name of the firm must reflect that it is a sole proprietorship; and
3. Whether the corporate name must be changed.

SUMMARY OF OPINION:

The firm name "X and Associates" is not a trade name and is not improper or misleading, provided the employing lawyer's name is included in the firm name and the lawyer does in fact employ other lawyers to assist him in his practice. A sole practitioner may not practice under the name "X and Associates" even though he intends to hire associates in the future. Accordingly, the corporate name must be changed in this case.

ETHICAL RULES CITED:

ER 7.1. Communications Concerning a Lawyer's Services

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[.]

ER 7.5. Firm Names and Letterheads

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates ER 7.1. A trade name may not be used by a lawyer in private practice.

RELEVANT PRIOR OPINIONS:

Arizona

Formal Opinion No. 100 (May 28, 1962)
Formal Opinion No. 102 (June 2, 1962)

American Bar Association

Formal Opinion No. 219 (July 12, 1941)
Formal Opinion No. 303 (November 27, 1961)
Formal Opinion No. 310 (June 20, 1963)
Formal Opinion No. 318 (July 3, 1967)

OPINION:

Trade Names

In our Formal Opinion No. 102 (June 2, 1962), this committee held that it was improper for an attorney to use the name "John Doe & Associates" on his doorway panel, letterhead and professional card. That Opinion was based on Formal Opinion 219 of the American Bar Association Committee on Professional Ethics and Grievances (July 12, 1941), which specifically disapproved of the use of the phrase "and Associates" in a firm name because the term in conjunction with the name of an individual negatives the existence of a partnership. This committee in Opinion No. 102 concluded that such a firm name would violate the established custom among lawyers in Arizona, and that the name would fall into the category of an assumed or trade name, improper under the Canons of Professional Ethics then controlling.

When ABA Opinion 219 was rendered, the only permissible way to organize a law firm was as a partnership. In the early 1960's, however, the concept of a "professional corporation" or "professional association" gained popularity and was approved by the ABA Ethics Committee in its Formal Opinion 303 (November 27, 1961) with the condition that certain safeguards be maintained. One of these is that the firm name must not mislead the public.

An Editor's Note to our Opinion No. 102 directs readers to ABA Formal Opinion 310 (June 20, 1963) for a more recent opinion on the use of the phrase "and Associates" in a firm name. In that opinion, the ABA Ethics Committee sanctioned the use of the phrase "and Associates" in conjunction with an individual or partnership name where a firm or lawyer employs additional attorneys to perform legal services but who do not share in the responsibility and liability for the acts of the firm or lawyer. In ABA Formal Opinion 318 (July 3, 1967), the committee held that the use of the phrase "and Associates" following the name of one or more members of a professional corporation or association is a proper method of indicating the limited responsibility of the members of such an organization.

Although formal opinions of the ABA Committee on Professional Ethics are not binding upon this Committee, they are highly persuasive precedent in our resolutions of identical or analogous ethical questions. Statement of Jurisdictional Policies, paragraph 10.

When Arizona adopted the Rules of Professional Conduct in 1985, it retained the prohibition against trade names rather than adopting proposed Model Rule 7.5, which permits the use of trade names. However, following research into the ethical rules and ABA opinions, it is the opinion of this committee that the firm name "X and Associates" is not a trade name and is not improper or misleading, provided the employing lawyer's name is included in the firm name and that the lawyer does in fact employ other lawyers to assist him in his practice. Accordingly, a sole practitioner may not practice under the name of "X and Associates" even though he intends to hire associates in the future. The name is misleading to the public because it implies that the lawyer is practicing in association with other lawyers.

Professional Corporation Statutes

A.R.S. Section 10-906 provides in part:

"A. A professional corporation may adopt a name consisting of the full or last name of one or more of its shareholders or, if not otherwise prohibited by law or the canons of ethics of the profession concerned, may adopt a fictitious name."

ER 7.5 contains restrictions on professional corporation names that are not set forth in A.R.S. Section 10-906. In the selection of a firm name, therefore, the provisions of ER 7.5 must be observed. Because the use of a trade name or fictitious name is prohibited under ER 7.5, a corporate name may have to be changed from time to time. See our Opinion No. 100 (May 28, 1962) for a discussion of firm names and other issues under the professional corporation statutes.

Conclusion:

The committee expressly overrules our Formal Opinion No. 102 and holds that the firm name "X and Associates" is not a trade name and is not improper or misleading under the Rules of Professional Conduct, provided that the employing lawyer's name is included in the firm name and that the lawyer does employ one or more other lawyers to assist him in his practice. The corporate name of the inquiring attorney's firm must be changed to reflect the true character of the firm as a sole proprietorship. The fact that the attorney may in the future employ one or more associates does not change the fact that the firm name is misleading to the public at the present time.