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ETHICS OPINION  
RO-90-100

QUESTION:

Must a lawyer or law firm operating under a trade name, such as "AAA Legal Clinic", include that trade name in all permissible communications made pursuant to Canon 2 of the Code of Professional Responsibility or Rule 7 of the Rules of Professional Conduct?

ANSWER:

Rule 7.5(a) of the Rules of Professional Conduct states in pertinent part as follows, to-wit:

"Rule 7.5 \* \* \*

- (a) 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 organization and is not otherwise in violation of Rule 7.1 or Rule 7.4."

Rule 7.1 says in pertinent part as follows, to-wit:

"Rule 7.1 \* \* \*

A lawyer shall not make or cause to be made 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; ..."

Lawyers are permitted to advertise and to communicate with the public regarding legal services in a variety of ways including, but not limited to, public media such as a telephone directory, legal directory, newspaper or other periodical, outdoor display, radio, television, mailed circulars, brochures or "Shapero letters". In addition lawyers may, and by tradition do, utilize business cards and letterhead/legal stationary as a means of communicating with the public. With recent amendments to the ethical rules governing lawyer advertising it has become permissible for Alabama lawyers

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to render legal services under a "trade name", so long as the name of one or more lawyers responsible for the content of the communication relating to those services is a part of, or accompanies, the use of a trade name. Accordingly, the aforementioned (mythical) "AAA Legal Clinic" is permissible, so long as any communications regarding services rendered by "AAA", such as permissible advertisements, letterheads or business cards (all being communications permitted pursuant to the rules), include not only the name "AAA Legal Clinic" but also the name of a lawyer responsible for the content of the communication. In the context of "AAA Legal Clinic" such a communication might state "AAA Legal Clinic, John Doe, Attorney". Such a listing is not the only form permissible, but is merely illustrative of the connection between trade name and attorney name required by the rules.

The Commission must also consider whether an attorney, operating under a trade name, should continue use of that trade name in connection with all permissible communications made pursuant to the rules. In our opinion it is both reasonable and proper for an attorney, operating under a trade name, to continue to utilize that trade name in all permissible communications including letterhead and business card communications, and also in legal advertising permitted by the rules. The purpose of all bar regulation of attorney advertising content is to protect the public and to insure that information about legal services, and communications made by lawyers about services, are truthful, non-deceptive and informative. The rules directly address misrepresentations made by both commission and omission [Rule 7.1(a)]. In our opinion for an attorney to practice under a trade name and to hold himself out under a trade name in one instance, and then to abandon that trade name when it suits his convenience, creates an omission that falls below the standard mandated by Rule 7.1. Accordingly, not only must an attorney, practicing under a trade name, include in all permissible communications the name of a lawyer responsible for the content of the communication, but it is our opinion that this rule also requires that the connection between lawyer and trade name be consistent and uniform such that the connection become inseparable and a part of all public communication made on behalf of either. A lawyer using a trade name has made an election and has thereby determined how he must be identified in public communications. His trade name has become his firm name, by choice, and his

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use of this trade name precludes the use of any other firm name or trade name in permissible public communications. John Doe, of the mythical "AAA Legal Clinic" cannot have an alternate identity as a partner in "Doe, Roe and Moe, Attorneys", unless the usage is "Doe, Roe and Moe, Attorneys, d/b/a AAA Legal Clinic".

The use of the trade name, together with the name of the lawyer, in pleadings and the like is a matter beyond the scope of this opinion but it is nonetheless our opinion that, unless otherwise precluded by court rule, the use of the trade name should be carried forward into such pleadings and into all permissible communications regarding the same.

A further effect of this opinion will be that lawyers or law firms that have adopted trade names selected or designed to provide an alphabetical advantage in "Yellow Page" directory listings will have to be consistent in the use of that trade name in all permissible communications. To allow the use of a trade name in one context, while to permit its omission in all other respects, would be to make a sham of the rule and would permit misleading communications, either by the use of the trade name in one context or by its omission in another. Consistency and uniformity are the only remedy and it is thus our opinion that a trade name, once adopted, and once used in connection with communications with the public pursuant to Rule 7, must be used in all contexts and in all permissible public communications. Application of this standard will insure that the Bench, the Bar and the public will be afforded complete and accurate information regarding the lawyer or law firm offering legal services, and that everyone will know with what lawyer and what entity they are dealing.

AWJ/vf

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