

FORMAL OPINION NO 2005-108

[REVISED 2015]

Information about Legal Services: Dual Professions, Yellow Pages Advertising

Facts:

Lawyer has an active family mediation practice. In addition to advertising this practice under the “Attorneys” section of the Yellow Pages, Lawyer desires to advertise under the “Counselors—Marriage, Family, Child, and Individual” section of the Yellow Pages.

Question:

May Lawyer advertise under the “Counselors—Marriage, Family, Child, and Individual” section of the Yellow Pages?

Conclusion:

Yes, qualified.

Discussion:

Oregon RPC 7.1 provides:

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 contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Oregon RPC 7.5(a) provides:

A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. 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.

See also OSB Formal Ethics Op No 2005-101 (rev 2015) (mediation services generally).

If Lawyer intends to maintain an independent business as a counselor, separate and apart from Lawyer's legal business, Lawyer may do so. OSB Formal Ethics Op No 2005-10. Lawyer's advertising and conduct of that separate business cannot, however, include "conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law." Oregon RPC 8.4(a)(3); *see In re Houchin*, 290 Or 433, 622 P2d 723 (1981); *In re Staar*, 324 Or 283, 924 P2d 308 (1996) (fact that lawyer was not acting as lawyer at time of false swearing in petition for family abuse prevention restraining order did not diminish lawyer's culpability).

If Lawyer intends to advertise *as a lawyer* in the Counselor section of the Yellow Pages, Lawyer may do so if the advertisement is not false or misleading or otherwise in violation of Oregon RPC 8.4(a)(3), Oregon RPC 7.1, and Oregon RPC 7.5. A person reading an advertisement in the Counselor section of the Yellow Pages would normally be seeking counseling services, not legal services, and would otherwise tend to believe that an advertiser has special qualifications in, and is offering services in, counseling. Accordingly, the advertisement must reflect Lawyer's status as a lawyer offering services as a family mediator.

Approved by Board of Governors, September 2015.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 2.4 to § 2.4-1 (advertising), § 2.5-3 (letterhead and business cards) (OSB Legal Pubs 2015); ABA Model RPC 7.1; ABA Model RPC 7.5; and ABA Model RPC 8.4(c). *See also* Washington Advisory Op No 1488 (1992); Washington Advisory Op No 1528 (1993). (Washington advisory opinions are available at <www.wsba.org/resources-and-services/ethics/advisory-opinions>.)