

FORMAL OPINION NO 2005-153

[REVISED 2015]

**Information about Legal Services:
Insurer-Employed Lawyers' Firm Name**

Facts:

Lawyers *A* and *B* are employees of an insurer and defend insureds' liability claims for the insurer.

Question:

Can *A* and *B* refer to themselves on their letterhead and pleadings as "A & B, Attorneys at Law," "A & B, Attorneys at Law, Not a Partnership," or "A and B, Attorneys at Law, an Association of Lawyers," without disclosing their status as employees of the insurer?

Conclusion:

No.

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 provides, in pertinent part:

(a) 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.

...

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is a fact.

See also Oregon RPC 8.4(a)(3), which prohibits “conduct involving dishonesty, fraud, deceit or misrepresentation.” In short, and as these and other sections illustrate, lawyers cannot mislead others, whether they are clients or third parties.

Courts in other jurisdictions have held that failure to identify lawyer employees of an insurer is misleading. In *In re Weiss, Healey & Rea*, 109 NJ 246, 536 A2d 266, 268–69 (1988), the court said:

The question here is whether there is anything deceptive about the use of a name like “A, B & C” to describe the association of lawyer employees of an insurance company. We believe that it is evident that the mere use of the name “A, B & C” does not convey “with accuracy and clarity” the complex set of relationships that distinguish an association of lawyers representing a single insurer and its policyholders from an association of lawyers affiliated for the general practice of law. Yet, what secondary meaning *does* this form of firm name convey to the public? What does it tell us about the “kind and caliber” of legal services rendered by such an association?

We believe that the message conveyed by the firm name “A, B & C” is that the three persons designated are engaged in the general practice of law in New Jersey as partners. Such partnership implies the full financial and professional responsibility of a law firm that has pooled its resources of intellect and capital to serve a general clientele. The partnership arrangement implies much more than office space shared by representatives of a single insurer. Put differently, the designation “A, B & C” does not imply that the associated lawyers are in fact employees, with whatever inferences a client might draw about their ultimate interest and advice. The public, we believe, infers that the collective professional, ethical, and financial responsibility of a partnership-in-fact bespeaks the “kind and caliber of legal services rendered.”

In *Petition of Youngblood*, 895 SW2d 322, 331 (Tenn 1995), construing a rule similar to Oregon RPC 7.1 and Oregon RPC 7.5 (*former DR 2-102*), the court held that “an attorney-employee is not ‘a separate and independent law firm.’ The representation that the attorney-employee is separate and independent from the employer is, at least, false, misleading, and deceptive. It may be fraudulent, depending upon the circumstances under which the representation is made.”

See also California Formal Ethics Op No 1987-91 (1987 WL 109707), which concludes:

In the present context, the use of a firm name, other than “Law Division,” or an equivalent thereof, would be misleading in that clients of the Law Division—i.e., insureds—would be misled as to the relationship between the Insurance Company and its lawyers. Clients would be unaware that the individual lawyers were employed by the Insurance Company and would assume that the entity was a separate law firm. For this reason, the letterhead used must indicate the relationship between the firm and the Law Division. For example, the letterhead could contain an asterisk identifying the firm as the Law Division for the Insurance Company.

Accordingly, a letterhead or other pleading that does not fully identify Lawyers A and B as employees of the insurer would be impermissible.

Approved by Board of Governors, September 2015.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 2.4-1 (prohibition against false or misleading advertising or other communications), § 2.4-1(e) (catchall limitations on communications by a lawyer or law firm), § 2.5-2 (firm name and relationships) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* § 98 (2000) (supplemented periodically); ABA Model RPC 7.1; and ABA Model RPC 7.5.

