

**FORMAL OPINION NO 2005-169**

[REVISED 2016]

**Information about Legal Services:  
Firm Names—Retired Partner Mediator**

**Facts:**

Lawyer A is a former partner in the *AB&C* Law Firm. Lawyer A has retired from the active practice of law but continues to practice as a mediator. Lawyer A also consults with members of the *AB&C* Law Firm and receives a salary from the firm. Lawyer A’s name continues to be used in the firm name and Lawyer A is identified on the firm’s letterhead as “available solely as mediator.” Lawyer A has ceased to maintain Professional Liability Fund (PLF) coverage under ORS 9.080(2)(a), which requires coverage for lawyers “engaged in the private practice of law.”

**Questions:**

1. May the *AB&C* Law Firm continue to use Lawyer A’s name in the firm name and list Lawyer A on the firm’s letterhead as a mediator?
2. May Lawyer A work as a consultant within the firm if Lawyer A no longer maintains PLF coverage?

**Conclusions:**

1. Yes.
2. Yes, qualified.

**Discussion:**

Oregon RPC 7.5 provides:

(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.

....

(e) A lawyer may be designated “Of Counsel” on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as partner or associate. A lawyer may be designated as “General Counsel” or by a similar professional reference on stationery of a client if the lawyer of the lawyer’s firm devotes a substantial amount of professional time in the representation of the client.

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.

These rules permit the use of Lawyer A’s name in the firm name as long as the use of the name is not false or misleading. Although Oregon RPC 7.5 has been amended to more closely resemble the current version of ABA Model RPC 7.5, the ABA comments make it clear that a law firm may still use a retired lawyer’s name in the firm name.<sup>1</sup> Accordingly, the *AB&C Law Firm* may continue to use Lawyer A’s name in the firm name

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<sup>1</sup> See, e.g., ABA Model RPC 7.5 cmt [1] which provides in part: “it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer.” Other jurisdictions are in accord. See, e.g., DC Bar Ethics Op No 277 (1997) (available at <[www.dcbbar.org/bar-resources/legal-ethics/opinions/](http://www.dcbbar.org/bar-resources/legal-ethics/opinions/)>), which concludes that “[a] law firm may retain in its name the name of a former partner, except where the former partner is practicing law elsewhere or where the firm is prohibited by law from retaining the name.” The opinion explained that “at least as regards retired or deceased partners, ethics law has been clear since at least the time of the predecessor Code of Professional Responsibility that the names of such partners could ethically be included in law firm names.” See also Massachusetts Bar Association Ethics Op No 81-5 (1981) (available at <[www.massbar.org/publications/ethics-opinions/1980-1989/1981/opinion-no-81-5](http://www.massbar.org/publications/ethics-opinions/1980-1989/1981/opinion-no-81-5)>) (concluding that it would be permissible to include the names of retired partners in firm name); Washington Advisory Op No 2164 (2007) (available at <[www.wsba.org/resources-and-services/ethics/advisory-opinions](http://www.wsba.org/resources-and-services/ethics/advisory-opinions)>) (providing that “[p]rior opinions of the Committee make clear that a firm may continue to use the name of a former partner where the former partner is deceased, fully retired or inactive, or maintains some ownership stake in the firm”).

because Lawyer A is a former partner of the Firm, Lawyer A retired from the active practice of law (e.g. Lawyer A is not practicing at another law firm), and the Firm is clear about the services that Lawyer A may provide.

The firm may hold out Lawyer A as “available [to clients] solely as a mediator” if this representation is true and Lawyer A’s conduct is lawful. Under Oregon law, PLF coverage is required only of lawyers who engage in the private practice of law. ORS 9.080. Because mediation is not the practice of law, a lawyer who limits services to mediation is not required to have PLF coverage. *Cf. In re Kluge*, 332 Or 251, 27 P3d 102 (2001); *Balderree v. Oregon State Bar*, 301 Or 155, 719 P2d 1300 (1986). Moreover, Lawyer A can provide consulting advice to others engaged in the firm’s legal practice without personally practicing law. *See also* OSB Formal Ethics Op No 2005-65 (rev 2015) (nonlawyer personnel may be listed as such on letterhead). Affected clients should be informed that Lawyer A’s participation is advisory only, and that Lawyer A does not assume responsibility for the handling of any client’s matter.

**Approved by Board of Governors, April 2016.**

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COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 2.5-2 (firm names and relationships), § 13.3-1(a) (including names of deceased, retired, or inactive lawyers in name of law practice) (OSB Legal Pubs 2015); ABA Model RPC 7.1; and ABA Model RPC 7.5.

