

**Kentucky Bar Association**  
**Ethics Opinion KBA E-338**  
Issued: June 1990

*Since the adoption of the Rules of Professional Conduct in 1990, the Kentucky Supreme Court has made substantial revisions to the rules governing the advertisement of legal services. For example, this opinion refers to Rule 7.5, which was revised and renumbered as Rule 7.50. Lawyers should consult the current version of the rules and comments, SCR 3.130, (available at <http://www.kybar.org>) and the Attorneys' Advertising Commission Regulations, before relying on this opinion.*

**Question:** May a Kentucky lawyer privately practice law for profit under a trade name?

**Answer:** No.

**References:** DRs 2-102(B) and (C), Rule 7.5, and Simon v. Kentucky Bar Association, 742 S.W.2d 959 (Ky. 1988).

**OPINION**

This question was presented by a lawyer who wishes to use a trade name for a “partnership of PSC’s and individuals in the private practice of law for profit, conducted in more than one jurisdiction.” The lawyer’s proposal was approved by the Attorneys’ Advertising Commission “from an advertising point of view only,” and otherwise referred to the Ethics Committee for consideration of the propriety of practice under a trade name.

The requestor-lawyer points out that ABA Model Rule 7.5 permits lawyers to use trade names, and that the Kentucky version of the Rule is silent as to the use of trade names. It is also argued that approval under the SCR governing advertising (and the Attorneys’ Advertising Commission) resolves the matter.

The Committee is quite familiar with the trade name issue, and dealt with this same question in KBA E-302 (1985). A lawyer wanted to organize his office under a name (Simon & Simon) and franchise the use of it as a trade name for use by other independent firms\*. The Committee was unable to approve of this arrangement under the Code, since DR 2-102(B) prohibited trade names, and since DR 2-102(C) prohibited a lawyer from “holding himself out as having a partnership with one or more lawyers unless they are in fact partners.” This was simply not a matter for interpretation. This opinion was appealed to the Supreme Court. In Simon v. Kentucky Bar Association, 742 S.W.2d 959 (Ky. 1988) the Court rejected the use of trade names by lawyers in what may fairly be characterized as “strong terms”:

Movants request this Court to change the above-mentioned Rules and Commentary and adopt a new rule which is part of the Model Rules of the 1984

American Bar Association permitting such practice. This we decline to do. See DR 2-102(A), (B), (C), (D); Model Rule 7.5.

The KBA Model Rules Committee (chaired by the Ethics Committee Chairman) recommended adoption of the ABA version of Rule 7.5. That Rule permits a lawyer to practice under a non-misleading trade name. However, the Court deleted the language permitting the use of trade names (as well as much of the commentary to the Rule) from the final version of the Rule.

The requestor makes an argument for interpretation of the Rule that is plausible in the abstract: silence is not a prohibition, and in the absence of an explicit prohibition, the Rule prohibits only names which are false and misleading (the Rule permits non-deceptive trade names). However, the Committee concludes that the Rule must be interpreted in light of certain "history", to wit, the Supreme Court's views as expressed in Simon and the actions taken by the Court in adopting the Model Rules.

It is the opinion of the Committee that Kentucky lawyers may not practice under trade names, and that the Court intended the Rule to effect the same prohibitions as the Code.

It goes without saying that this opinion may be appealed to the Supreme Court, or that appropriate change or clarification may be sought through a Rule change.

\*We also note that for purposes of this question we have assumed that the organization contemplated will be a true partnership, as opposed to a franchising arrangement. Such franchising arrangements would appear to be improper even under a trade name, to the extent that they imply that the lawyers practice in a partnership or other organization whose members are fully responsible to the client when that is not the fact. See Rule 7.5(d). See also 7.5(b) regarding disclosure of jurisdictional limitations.

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***Note to Reader***

*This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.*