

# Ethics Opinion

900308

## QUESTIONS PRESENTED:

1. May a professional corporation which acted as a law firm convert to a regular business corporation for the purpose of leasing to the law firm a building, furniture, office equipment and a receptionist?
2. May attorneys who were once associated in a professional corporation continue to use the same names on their letterhead if they are no longer associated with each other except by the sharing of office space?

## ANSWER:

1. Yes.
2. No.

## ANALYSIS:

1. No state law or Rule of Professional Conduct prohibits a professional corporation from changing its status to that of a regular business corporation.

There are no Montana statutes or Rules which would prohibit dissolving an existing professional corporation and reorganizing as a regular business corporation under title 35, chapter 1, part 1, MCA. A corporation that exists for the purpose of owning and leasing a building, furniture, equipment and a receptionist may not meet the definition of "professional corporation" under section 35-4-109, MCA, and therefore changing its status to that of a regular business corporation would seem proper.

2. Attorneys who are not partners but who create the appearance of practicing as partners by using their names together on a letterhead are in violation of Rule 7.5(a) and (d) of the Montana Rules of Professional Conduct.

Rule 7.5, Firm Names and Letterheads, is applicable to questions involving the use of names on attorneys' letterhead. The rules provides in pertinent part:

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

\* \* \*

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

Rule 7.5(a) makes reference to Rule 7.1. Rule 7.1, Communications Concerning A Lawyer's Services, provides in pertinent part:

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:

(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. . . .

A lawyer's letterhead is a form of public communication and as such is subject to the general directive of Rule 7.1 that it not contain material that is false or misleading. The comments accompanying Model Rule 7.1 as adopted by the American Bar Association state that "lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, 'Smith and Jones' for that title suggests partnership in the practice of law." According to the ABA/BNA Lawyers' Manual on Professional Conduct (1989), lawyers practicing in a partnership arrangement have agreed to share liability for any loss attributable to activities of the partnership. Moreover, listing other lawyers on office letterhead implies that their skill and expertise are available for the lawyer to draw on in different cases. If the arrangement is simply one of sharing office space, then those resources may not in fact be available to the lawyer. *Id.*, at 81:3004. Consequently, suggesting through the name on a office letterhead that a partnership exist where it does not constitutes a misleading communication about lawyer services and is in violation of Rules 7.1 and 7.5.

Relevant case law supports the proposition that a lawyer may not imply that he practices in a partnership unless that is in fact the case. *See, Florida Bar v. Hastings*, 523 So.2d 571 (Fla. 1988) (lawyer reprimanded for practicing law under a firm name that indicated he was in partnership with another lawyer when he was not); *In re Lobenheimer*, 335 N.W.2d 624 (Wis. 1983) (firm name containing names of two lawyers who were not truly associated was deceptive); *Attorney Grievance Commission of Maryland v. Crowther*, 453 A.2d 140 (Md. 1982) (lawyer disciplined for falsely holding himself out as a member of a partnership).

State and local bar ethics opinions are consistent with the case law cited above. *See* ABA/BNA Lawyers' Manual on Professional Conduct, *supra*.

While Rule 7.1 is general in prohibiting misleading communication by an attorney, Rule 7.5 is more specific as it specifically relates to misleading communication in a letterhead and communications that falsely imply the existence of a partnership. Office-sharing arrangements often cause difficulty with respect to the use of a name for the arrangement. Use of a designation that links the names together is unacceptable. *See, In re Sussman*, 405 P.2d 355 (Or. 1965) (use on letterhead of names of five lawyer under heading "Associates" was found to be misleading and unethical where there was no association among them except their common suite of offices); *In re Eddleman*, 389 P.2d 296 (Wash. 1964), *cert. denied*, 379 U.S. 990 (1965) (carrying on professional activities under false partnership name constituted misconduct). *See also* Wolfram, *Modern Legal Ethics* (1986) at 884-885.

State and local ethics opinions interpreting Rule 7.5 are consistent with the above cited cases. See ABA/BNA Lawyers' Manual on Professional Conduct at 91:602 and 81:3015. Further support for this interpretation is found in ABA Ethical Considerations (EC 2-11, 2-12, and 2-13) and ABA Disciplinary Rule 2-102(b) and (c).

In summary, Rules 7.1 and 7.5 would prohibit the proposed arrangement wherein attorneys who had practiced together as a professional corporation continue to use the same names on their letterhead in spite of the fact that they are no longer associated other than through the office sharing. The rationale for prohibiting such an action is that it falsely implies that all of the lawyers named on the letterhead would be available to render legal advice to a potential client and would share in the responsibilities and liabilities of that client's case.

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