

Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2001-07 Request No. 833
Issued October 18, 2001

Facts:

The name of the inquiring attorney's law firm contains the name of an attorney whose license to practice law has been suspended by the Rhode Island Supreme Court. The suspended attorney is one of the founding partners of a partnership which was named after him/her and another partner. The law firm now practices law as a personal service corporation with the same name.

For several years before the suspension, the attorney was employed full-time for another corporation in a nonlawyer capacity. Although the inquiring attorney states that at the time of the order of suspension, the attorney was "effectively retired" from the firm, the attorney remained licensed to practice law and continued to provide legal services at the law firm until the suspension. He/she also continued to be a shareholder in the firm. By agreement, the attorney's compensation was calculated and paid after the end of each calendar year. The attorney was suspended from the practice of law before the end of a calendar year.

Issues Presented:

The inquiring attorney asks the following: (1) May the law firm continue to use the firm name which contains the name of the suspended attorney? (2) May the law firm pay the suspended attorney for services he/she performed before the suspension where the final calculation and payment of compensation is made after the effective date of the suspension?

Opinion:

(1) The suspended attorney's name must be removed from the law firm name during the period of suspension. (2) The law firm may pay the suspended attorney on a quantum meruit basis for services he/she rendered prior to his/her suspension.

Reasoning:

Rule 7.5(a) of the Rules of Professional Conduct entitled "Firm Names and Letterheads" applies to this inquiry. It provides as follows:

(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.

Rule 7.1 prohibits lawyers from making “ a false or misleading communication about the lawyer or the lawyer’s services.” The Commentary to Rule 7.5 provides further guidance. It states in pertinent part:

A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm’s identity or by a trade name such as the “ABC Legal Clinic.” Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. . . . It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm.

A suspended attorney is not associated with his/her law firm during a period of suspension. The Panel is therefore of the opinion that the continued use of the suspended attorney’s name in the firm name is misleading, and violates Rule 7.1 and Rule 7.5(a).¹

¹ Other authority supports the Panel’s conclusion that the suspended lawyer’s name must be removed from the firm name, specifically, Rhode Island Supreme Court Rules, Art. II, Rule 10, which governs the practice of law by professional service corporations and limited liability partnerships. Subdivision (i) of Rule 10 sets forth the requirements relating to the name of a professional service corporation that is licensed to practice law. In pertinent part it states:

The name of every limited entity engaged in the practice of law shall contain the name of one or more of its attorney-employees except as hereinafter provided. . . . The use of a trade name, an assumed name, or any name that is misleading as to the identity of the attorney or attorneys employed by the limited liability entity in the practice of law is prohibited: however, if otherwise lawful, such limited liability entity may use as, or continue to include in , its name the name or names of one or more of its deceased or retired attorney-employees or of a predecessor firm in a continuing line of succession. . . . nor shall the name of any attorney-employee whose employment or partnership has been terminated be continued in the name of the limited liability entity except as provided herein.

The Rules of Professional Conduct and Rule 10(i) of Article II of the Supreme Court Rules permit the continued use of names of retired or deceased lawyers in law firm names. Based on the facts as presented in the instant inquiry, the Panel finds that the attorney in question was not retired. He/she remained licensed to practice law, continued to provide legal services at the law firm, and remained a shareholder in the corporation, until the suspension. The attorney is no longer associated with the law firm because of the suspension.

The Panel rejects the assertion of the inquiring attorney that the firm name is a trade name and as such, the removal of the suspended attorney's name from the firm name is not required. While the issue of whether or not the name of the law firm in this inquiry constitutes a trade name is a matter of substantive law and is not a question of ethics, the Panel concludes that the continued use of the suspended attorney's name in the law firm's name, regardless of whether or not it is deemed a trade name, is misleading, violates Rules 7.1 and 7.5(a) of the Rules of Professional Conduct, and violates Rule 10(i) of Article II of the Supreme Court Rules. The inquiring attorney is therefore advised that the suspended attorney's name be removed from the firm name during the period of suspension.

Rule 5.4(a) of the Rules of Professional Conduct prohibits lawyers from sharing fees with nonlawyers. However, a suspended lawyer is entitled to, and a lawyer may pay a suspended lawyer, his/her share of fees, as long as the fee to be paid to the suspended lawyer is calculated on the basis of work performed by him/her. See R.I. Sup. Ct. Ethics Advisory Panel Op. 91-71(1991), R.I. Sup. Ct. Ethics Advisory Panel Op. 92-58(1992). The fact that, in the instant inquiry, payment is deferred by agreement to a date after the effective date of the suspension does not affect the law firm's obligation to pay. The Panel concludes that the inquiring attorney's law firm may pay the suspended attorney on a quantum meruit basis for services he/she rendered prior to his/her suspension.