

DIGEST OF ETHICS ADVISORY PANEL
OPINION 89-10, REQUEST #52
Issued June 15, 1989

An attorney seeks Panel advice concerning the propriety of his firm practicing under the firm name of "X, Y & Z, P.C." where Y and Z are partners in the firm and X was a partner prior to his death. The attorney advises the Panel that he and his associates have organized their firm as a professional service corporation pursuant to G.L. 1956 (1985 Reenactment) § 7-5.1-7. The attorney states that subsequent to incorporation he and his associates registered a fictitious business name for the corporation. This name, "X, Y & Z, P.C." has been duly recorded with the Rhode Island Secretary of State's Office for over twelve years. The attorney explains that he and his associates adopted this firm name believing it to be proper in view of the firm's status as a professional corporation and not "misleading as to the identity of the attorney or attorneys employed by the corporation in the practice of law." Supreme Court Rule 41(h).

Rule 7.1, titled "Information about Legal Services," provides, in pertinent part:

Communications Concerning a Lawyer's Services. -- 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 . . .

Rule 7.5 provides, in pertinent part:

Firm Names and Letterheads -- (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

The Rhode Island Supreme Court specifically authorized Rhode Island attorneys to practice law in the form of a professional service corporation in Supreme Court Rule 41. Rule 41 provides, in pertinent part:

Professional service corporations. -- (a) Attorneys at Law admitted to practice before this court may engage in the practice of law in the form of professional service corporations as provided by the Professional Service Corporation Law, G.L. 1956 (1969 Reenactment) §§ 7-5.1-1 to 7-5.1-12, as amended.

(b) A professional service corporation may not engage

in the practice of law unless and until it applies to and receives from this court a license to operate under the Professional Service Corporation Law and only so long as such license remains in good standing.

* * *

(n) The name of every professional service corporation engaged in the practice of law shall contain the name of one or more of its attorney-employees except as hereinafter provided. It shall end with the words "corporation" or "incorporated" or the abbreviations "Corp." or "Inc." 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 corporation in the practice of law is prohibited; however, if otherwise lawful, such corporation 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 . . .

Rhode Island General Laws § 7-5.1-7, titled "Names," provides:

"the names of every professional service corporation shall end with the words "Corporation" or "Incorporated" or "Limited" or the abbreviations "Corp." or "Inc." or "Ltd."; and such designation in the corporate name shall constitute notice to every person or corporation availing himself or itself of the services of any such corporation, that it is organized under the provisions of this chapter; Provided however that a corporation organized under this chapter may engage in rendering professional services under a fictitious business name subject to provisions of § 7-1.1-7.1. Each regulatory agency may impose additional requirements as to the names of corporations organized to render professional services subject to its jurisdiction.

Section 7-5.1-2(2) provides that "'Regulatory Agency' shall mean The Supreme Court when referring to attorneys at law . . ." Section 7-1.17.1, titled "Fictitious business name" authorized the use of a fictitious name with appropriate and timely filings of a fictitious business name statement with the Secretary of State's Office.

The Rules of Professional Conduct, expressly allow attorneys engaged in private practice to use trade names provided no connection is implied with public, governmental or charitable organizations and provided the trade name does not otherwise violate Rule 7.1. The Rhode Island Supreme Court made no change in Supreme Court Rule 41(h) when it adopted the Rules of Professional Conduct on November 15, 1988, leading inescapably to the conclusion that no inconsistency arose. The Panel thus interprets Rule 41(h) to require an attorney who wishes to conduct a practice as a professional service corporation to either end the corporate name with the specified words, or the specified abbreviations, or to follow the statutory procedures for using and

registering a fictitious name as set forth in § 7--1.1-7.1 and referenced in § 7-5.1-7. Under Rule 41(h) the trade name used cannot be "misleading as to the identity of the attorney or attorneys . . ." The Panel takes the position that "X, Y and Z, P.C." is not misleading, since it includes "names of all or some of its members [and] . . . deceased members where there has been a continuing succession in the firm's identity . . ." Comment, Rule 7.5.

The Panel finds that the trade name "X, Y and Z, P.C." is a permissible exercise of the discretion bestowed upon the attorneys licensed in this state by this Court's adoption of Rules 7.1 and 7.5, and Supreme Court Rule 41 and by this Court's approval of G.L. § 5-5.1-5 et seq. with its reference to § 7-1.1-7.1. See In re Rhode Island Bar Association, 106 R.I. 752, 263 A.2d 692 (1970). The Panel takes the position that "X, Y and Z P.C." is proper under the Rules of Professional Conduct.

Ethics Advisory Panel advice is protective in nature. There is no requirement that an attorney abide by a Panel opinion, but if he or she does, he or she is fully protected from any charge of impropriety.