

Final

RHODE ISLAND SUPREME COURT
ETHICS ADVISORY PANEL
Opinion No. 99-10, Request No. 780
Issued May 13, 1999

Facts:

Attorney A, who is the inquiring attorney, and Attorney B have organized their firm as a professional service corporation. The name of the firm is "A & B, Inc. Attorneys at Law." Attorney B is leaving the firm and will enter the public sector as a government attorney. Attorney A would like to retain the current name of the firm after Attorney B terminates his/her association with the firm. Attorney B has consented to the continued use of his/her name.

Issue Presented:

The inquiring attorney asks whether he/she may retain the current name of the firm after Attorney B terminates his/her association with the law firm.

Opinion:

The continued use of B's name would be misleading and is inconsistent with Article II, Rule 10 of the Supreme Court Rules. Therefore, the inquiring attorney may not retain the current name of the firm after B leaves the firm.

Reasoning:

Rule 7.1 and 7.5 of the Rules of Professional Conduct and Rule 10 of the Supreme Court Rules governing the admission to the practice of law lead the Panel to conclude that the continued use of B's name is not permissible. Rule 7.1 provides in pertinent part as follows:

Rule 7.1. 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;

Pertinent provisions of Rule 7.5 are as follows:

Rule 7.5. 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.

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

Article II, Rule 10 of the Rhode Island Supreme Court Rules authorizes attorneys admitted to practice before the Rhode Island Supreme Court to engage in the practice of law in the form of a limited liability entity. The term "limited liability entity" includes a professional service corporation and a registered limited liability partnership organized pursuant to the applicable statutes. See Article II Rule 10(a). Paragraph (i) of Rule 10 states in relevant part:

(i) The name of every limited liability 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. The name of any attorney employee who assumes a judicial, legislative, public-executive or administrative post or office shall not be continued in the corporate name during any significant period in which he or she is not actively and regularly engaged in the practice of law as an employee or partner of the limited liability entity; 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.

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The Panel is further guided by the Comment to Rule 7.5:

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 predecessor of the firm.

The Panel concludes that the continued use of Attorney B's name in the name of Attorney A's law firm subsequent to Attorney B's severance from the firm, is misleading and is inconsistent with Article II, Rule 10 of the Supreme Court Rules. The Panel therefore advises Attorney A that he/she may not continue to use the current name of the firm after Attorney B's association with the firm is terminated.