

ADVISORY ETHICS OPINION 83-07

SYNOPSIS:

When a partner leaves a firm to practice in another state, the firm name does not have to be changed to delete the name of the leaving partner as long as that partner maintains an “of counsel” relationship with the firm.

OPINION:

This opinion deals with the permissible name of a law firm. At the time of the request, the firm carries the name of the three partners. One of the partners is moving to another state but intends to continue a relationship to the firm described as “of counsel.” The firm asks whether it can continue to use its current name as long as the “of counsel” relationship continues with the partner who is leaving the firm.

DR 2-102(B) prohibits the practice of law under a name that is “misleading as to the identity of the lawyer or lawyers practicing under such name” or the use of a firm name containing names other than those of “one or more of the lawyers in the firm.” EC 2-11 acknowledges that there is an exception to the prohibition where the firm name continues to use the name of a partner who has retired or is deceased if authorized by law and the public is not misled thereby. The exception does not apply if the lawyer continues to practice law so as not to mislead the public.

In answering the inquiry, we assume Vermont law allows the firm to continue to use the current name.

While the question is close, and we can find no opinions of the ABA Ethics Committee or this Committee that are helpful, it is our opinion that the firm can continue to use the full name. The situation is akin to that where a lawyer retires from the firm. While the partner who is leaving may continue to practice, the practice will be in another state so there is no real fear of deceiving the public. The letterhead of the firm should clearly denote the partner who is leaving as “of counsel.” When the “of counsel” arrangement terminates, the name of the firm will have to be changed.