

ADVISORY ETHICS OPINION 91-10

SYNOPSIS:

- (A) An attorney may practice under a trade name that is not misleading and does not imply a connection with a government agency or public or charitable legal services organization.
- (B) An attorney may state that he or she “concentrates” or “restricts” his or her practice to a particular area of the law.

QUESTIONS PRESENTED:

- (1) May an attorney select a trade name which would reflect the nature of his or her practice and which does not include the name of an individual attorney?
- (2) May the attorney, by letterhead or otherwise, state that his or her practice concentrates on or is restricted to a particular area of the law relevant to Question 1?

OPINION:

The Disciplinary Rules relevant to Question 1 are 2-101 and 2-102 which provide as follows:

DR 2-101 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: (1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading; (2) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Code of Professional Responsibility or other law; (3) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or (4) makes a claim about the lawyer's quality of service, competence, or the like, unless the claim can be factually substantiated.

DR 2-102 Firm Names and Letterheads

- (A) A lawyer shall not use a firm name, letterhead or other professional designation that violates DR 2-101. 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 DR 2-101.
- (B) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.
- (C) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

The Disciplinary Rule controlling Question 2 is DR 2-105, which reads as follows:

DR 2-105 Communication of Fields of Practice

A lawyer may communicate the fact that the lawyer practices or does not practice in particular fields of law and that the lawyer concentrates in one or more fields of law. A lawyer shall not state that the lawyer is a specialist, except in the areas of patent or admiralty law if the lawyer is admitted to engage in patent practice before the United States Patent and Trademark Office, or is engaged in advertising or solicitation found in the earlier version of the Code. In important respects, all advertising is solicitation. The crucial concern is not the label to apply, but the extent to which overreaching or undue influence is likely to occur.

DISCUSSION:

- (1) Prior to the amendment of DR 2-102 on January 31, 1986, the rule provided that "A lawyer in private practice shall not practice under a trade name . . ." As amended, DR 2-102 has adopted the wording of Rule 7.5 of the Model Rules of Professional Conduct promulgated by the American Bar Association in 1983.

Although the United States Supreme Court has held that legislation may prohibit the use of trade names in a professional practice, use of such names in law practice is acceptable so long as it is not misleading. If the trade name includes a

geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency would be required to avoid a misleading implication.

In amending DR 2-103 the Vermont Supreme Court eliminated the prohibition which now appears as Rule 7.2(d) in the Model Code and reads as follows:

- (d) Any communication made pursuant to this Rule shall include the name of at least one lawyer responsible for its content.

It is, therefore, the opinion of this Committee that in advertising one's legal services, the communication need not include the name of a lawyer responsible for its content.

(2) Under DR 2-105, an attorney may communicate the fact that he or she concentrates his or her practice or restricts his or her practice to a particular field or fields of law. This is not the same as representing that an attorney "specializes" in a particular area of the law. Under the present Code, an attorney may not claim to specialize in a particular area of the law. A proposal has been made to amend the relevant section to permit attorneys to indicate a specialty. The proposed Amendments have not yet been adopted.