

Ethical Considerations of Naming a Firm

By Alecia M. Chandler

“What’s in a name?” Juliet asks Romeo in the second act of William Shakespeare’s “Romeo and Juliet.” Well, Juliet, when it comes to naming a law firm, the answer is — a lot.

When naming a law firm, lawyers don’t simply need to think about its alphabetical listing in the Yellow Pages; they need to think about how that name will impact branding and marketing. In the age of the internet, the firm name creates the first impression to potential clients.

But when naming a firm, don’t forget about ethics. Yes, even the seemingly simple question of what to name a law firm has deeper ethical implications, most notably Rule 7.5 (firm names and letterhead), Rule 7.1 (communications concerning a lawyer’s services), and Rule 7.2(d) (required information on certain media advertising) of the Michigan Rules of Professional Conduct (MRPC).¹

This article, based on the most common questions attorneys ask the SBM Ethics Helpline, will help you navigate the ethical issues to consider when naming a law firm.

Firm names cannot be misleading or deceptive

MRPC Rule 7.5 prohibits lawyers using a law firm name that is misleading or deceptive. Ethics Opinion RI-173 (1993) explains that “[t]he policy behind MRPC 7.5 is to ensure that no unjustified expectations are created for clients or potential clients, and further that clients, potential clients, and others are not deceived or misled in any way.”

Firm names routinely include the name of a lawyer or lawyers working within the firm. Recently, however, the Ethics Helpline has received numerous questions regarding naming a firm and trade names, and what to do when a member whose name is part of the firm name leaves. Let’s begin with trade names.

Trade names

Law firms may use trade names as long as they are not prohibited by law and comply with MRPC 7.5, 7.1, and 7.2(d).² Trade names are beginning to gain more steam as they may have greater potential to generate a sense of ownership from all members of the firm. Trade names are also beneficial because they can be used to better describe the specific type of legal work performed by the firm and they do not need to change when a firm’s partner leaves.

There are, however, ethical considerations. Use of a name that also happens to be a common surname may be considered a trade name. Ethics opinion RI-173 (1993) opined that the use of a common surname is ethical under very limited circumstances even if there are no lawyers with that surname associated with the firm — if it is not false or misleading. In this opinion, the law firm wished to use the name of the build-

ing in which it was located, which also happened to be a common surname. The State Bar of Michigan Standing Committee on Professional Ethics opined that use of the name was not misleading because the building’s name would also be included in the letterhead and advertising so as not to mislead the public.

In 2019, the Michigan Supreme Court adopted amendments to MRPC 7.2(d) which impacted the use of trade names by requiring media advertisements of law firms using a trade name to “identify the name and contact information of at least one lawyer responsible for the content of the advertisement.” When advertising under a trade name, lawyer identification must appear in the advertisement unless space does not permit; if that’s the case, the firm must prominently display the information on the homepage of its website. This is consistent with the rules of professional conduct in many other jurisdictions.

The SBM Ethics Helpline often fields questions about whether a specific advertisement requires the lawyer’s name. There is no rule connecting the size of an advertisement to whether the responsible lawyer’s name is required to appear along with it. Ethics counsel recommends a practical application; for example, a pen may be too small to include the complete information, but do not circumvent the rule by increasing the size of the font of the trade name to prevent space for the responsible lawyer’s name to appear. Some ethics opinions drafted prior to 2019 state that the name of the lawyer is not required when using a trade name, but those opinions have been overruled by an amendment to MRPC 7.2(d).

While use of trade names is not unethical, Ethics Opinion RI-130 (1992) opined that it is not ethical to franchise a trade

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name because it implies an association between lawyers that does not exist.

Including lawyers' names

The next frequently asked question to the ethics helpline involves firm names that include lawyers' names. When a firm name includes surnames, there are many more considerations. Non-owners and non-lawyers cannot be included in the name of the firm, nor can those who hold public office unless they are actively practicing within the firm.

Non-owner names

Using the name of a lawyer not responsible for the firm is misleading. "The rule is that the name of the business must accurately reflect the legal entity and the responsibility of the named shareholders/partners for the business of the firm."³ The most frequent questions the SBM Ethics Helpline receives about this topic relates to firm names involving either a deceased partner or one who has left the firm.

When a lawyer leaves the firm, their name must be removed from the firm name (with limited exception). Ethics Opinion RI-45 (1990) provides guidance on the application of this rule and advice regarding the timing of the name change. If a lawyer no longer has an ownership interest in the firm, his or her name must be removed from the firm name. In Ethics Opinion RI-59 (1990), a lawyer changed roles in the firm from shareholder to associate. The SBM Standing Committee on Professional Ethics opined that keeping the former shareholder's name as part of the firm name would be unethical because "[t]he inclusion of this person's name in the firm name implies the existence of a partnership or shareholder status which in fact does not exist."

Exceptions to this rule include deceased partners and retired partners with an exclusive of-counsel relationship. A law firm name including the name of a deceased partner is considered a trade name. Ethics Opinion RI-45 (1990) opines that if there is a continuing succession in the firm's iden-

tity, use of the name is not unethical; an example of ethical use of a deceased member's name is included in the opinion. However, if the firm's name changes for other reasons — such as a named member leaving the firm — the deceased member's name must be removed from the firm's name. Using a retired partner's name is misleading unless that partner has an exclusive of-counsel relationship with the firm and the "firm name has been long-established and well-recognized and communications about the lawyer's status clearly indicate that the lawyer is retired."⁴ In both scenarios, for the lawyer's name to ethically remain, the name must be "long established and well recognized."⁵

Additional considerations

Other questions posed to the SBM Ethics Helpline about firm names involve public officers, implied associations between lawyers, connections with governmental agencies or legal services providers, and multi-jurisdictional practices.

- **Public officers:** MRPC 7.5(c) prohibits using the name of a lawyer holding public office in the firm name or in communication on behalf of the firm if the "lawyer is not actively and regularly practicing with the firm."
- **Implied associations between lawyers:** MRPC 7.5(d) prohibits use of a firm name that implies a partnership or other association unless it is accurate. For example, two independent attorneys sharing office space but otherwise not associated with one another cannot use a firm name such as Smith and Jones.⁶ Moreover, terms like "Law Offices," "and Associates," and "professional corporation" are unethical *unless* the firm actually has more than one office, associates, or is a professional corporation.⁷
- **Connections with governmental agencies or legal services providers:** MRPC 7.5(a) states that firm names cannot "imply a connection with a government agency or...legal services agency." Comments to the rule suggest that if a firm uses a geographical location in its name, a disclaimer

may be required to clarify that it is not a public legal-aid agency.

- **Multijurisdictional practices:** Per MRPC 7.5(b), a firm located in more than one jurisdiction can use the same name in each jurisdiction, but the firm must identify the jurisdictional limitations of its attorneys. See also Ethics Opinion RI-353 (2012).

Conclusion

Naming a law firm can seem complex and overwhelming. However, guidance provided by rules, comments to rules, and ethics opinions provide a clear direction to find a name that is both ethical and recognizable. As stated in Ethics Opinion RI-45 (1990):

"[T]he rules require that lawyers be honest and clear in the representations which they make to the public regarding the nature of their practices. Firm names, letterhead, office signs, court pleadings, advertisements, and all other communications must accurately describe the nature of the relationship with other lawyers. Consumers of legal services have a right to understand what individual or entity they can look to for the provision of legal services and who they can hold responsible for the manner in which those services are provided."

This article provides general ethical guidance regarding naming a firm based upon the Michigan Rules of Professional Conduct and Ethics Opinions. It is advisory in nature and not binding on the disciplinary authorities. ■

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ENDNOTES

1. To locate ethics opinions on firm names, use the State Bar of Michigan Ethics Opinion Topic Index at <<https://www.michbar.org/opinions/ethics/detail/Index=F#103>> [<https://perma.cc/5E6U-PFQH>] (website accessed May 9, 2021).
2. Ethics Opinions RI-326 (2001) and C-231 (1984).
3. Ethics Opinion RI-45 (1990).
4. Ethics Opinion RI-90 (1991).
5. *Id.*
6. Ethics Opinion C-230 (1983).
7. Ethics Opinions RI-246 (1995) and RI-326 (2001).