

State Bar of South Dakota

Ethics Opinion 97-5

May 29, 1997

- **Rules 7.1; 7.5**
- **Subject: Advertisements; Letterhead; Firm name; Use of retiring firm member name**
- **Summary: Firm name may include retired member's name but if the individuals' name is listed on the letterhead, it must indicate the member is retired.**

**FACTS**

Attorney's name is included in the firm name. Attorney is fully retiring from and will no longer be associated with or of counsel to his/her former firm having sold his/her interest to the remaining member(s). You asked whether it is permissible for the remaining members continuing to practice as a partnership to use the attorney's name as part of the firm name on the letterhead. You also asked whether the firm can ethically use the retiring member's name under a designation "retired, no longer associated with the firm" on the letterhead. You also asked whether such designation will limit the retiring member's personal liability for firm activity.

**OPINION**

SDCL 16-18 Appx. Rule 7.5 governs "Firm Names and Letterheads" and precludes a "firm name or letterhead. . .that violates Rule 7.1." Rule 7.1 forbids "false or misleading communication about the lawyer or lawyer's services." Communication is deemed false or misleading if it, among other things, "states or implies that a lawyer has a relationship to any other lawyer unless such relationship in fact exists and is close, personal, continuous and regular...." Rule 7.1(c)(10). In addition, Rule 7.5 precludes stating or implying that lawyers practice in a partnership or other organization unless "that is the fact."

At least two state ethics committees have addressed substantially similar questions. ABA/BNA Lawyers' Manual on Professional Conduct [Manual], the Arizona Ethics Committee opined that a law firm "may include the name of a retired or deceased partner in the firm name provided there is a continuing line of succession in the firm's identity." Manual, 1001:1402, reporting Az. Opinion 91-11. In addition, the Arizona Committee opined that if lawyers "are listed individually on firm letterhead or in other listings, the retired lawyer's name must be omitted or his retired status must be indicated...." Manual, 1001:1402, reporting Az. Opinion 91-11.

Likewise, the Ohio Ethics Committee permitted the use of a retired lawyer's name on the firm letterhead when it was so listed before the lawyer retired, so long as the notation "retired" is included. Manual, 1001:6853, reporting Ohio Ethics Opinion 91-18.

Based on the above, the Committee believes the retired lawyer's name can ethically be used in the firm name but that the individual lawyer names included in the letterhead must either omit the retired lawyer's name entirely or, if the name is shown, at a minimum must clearly designate the retired lawyer as retired.

Whether any designation can or will limit the retired lawyer's potential liability arising from firm activity is a question of substantive law upon which this Committee is precluded from opining.

**Lonnie R. Braun**  
Chair, Ethics Committee  
State Bar of South Dakota