

Ethics Opinion 2007-9

- **Rules: 7.1 and 7.5**

- **Subject: Use of a service mark on a law firm letterhead and in advertisements, and shortening of the firm name.**

- **Summary: Statements used in advertising and on firm disclosures must not mislead or raise the level of expectation in regard to the results the Lawyer can achieve.**

I. Facts

The law firm, which includes in excess of ten lawyers, is considering changing the name of the firm by adopting a "trade name" using two names of current or former members as, for example "JonesSmith". In addition, the firm would like to adopt a logo along with the name as the firm's "service mark" which they would use on the letterhead and also in advertisements.

The facts are very concise in that the logo that the firm would like to adopt under the two name law firm is simply "A Tradition of Success".

II. Discussion

The primary rules applicable to this situation are Rules 7.1 and 7.5. Rule 7.1 Communications Concerning a Lawyer's Service states in part:

(b) **Purpose of Communication.** All communications shall be predominantly informational. As used in this Rule 7.1, "predominantly informational" means that, in both quantity and quality, the communication of factual information rationally related to the need for and selection of a lawyer predominates and that the communication includes only a minimal amount of content designed to attract attention to and create interest in the communication.

(c) **False or Misleading Communication.** 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:

...

(2) contains a prediction, warranty or guarantee regarding the future success of representation by the lawyer or is likely to create an unjustified expectation about results the lawyer can achieve;

(3) contains an opinion, representation, implication or self-laudatory statement regarding the quality of the lawyer's legal services which is not susceptible of reasonable verification by the public;

(4) contains information based on the lawyer's past success without a disclaimer that past success cannot be an assurance of future success because each case must be decided on its own merits;

...

(16) fails to contain disclaimers or disclosures required by this Rule 7.1 or the other Rules of Professional Conduct.

A portion of the service mark which the firm is contemplating using is "A Tradition of Success". Although "Tradition of Success" is so general that some professional persons may not see it as providing any significant "information" on past success, it is inconsistent with the spirit of the rule, i.e. protection of those not in a professional situation and would also be specifically inconsistent with the language of 7.1(c)(4). Use of the phrase is misleading to the general public and should not be placed on the letterhead without a disclaimer clearly explaining the limitations of the statement.

The second question posed by the law firm was in regard to the shortened version of the law firm name and whether that was acceptable.

Rule 7.5 Firm Names and Letterheads states in part:

- (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.

The Firm's decision to use the shortened name of the firm will include names of lawyers who have a long standing association with the firm. The use of a shortened firm name is allowable as long as there has been. "a continuing succession in the firm's identity". SDCL Appendix Rule 7.5 Comment. [1]. The names selected by the firm are of persons who have the continuity prescribed by the rule, and, in addition, there are persons with both names still actively working within the firm.

III. Conclusion

The committee is of the opinion that the firm's use of the shortened name is clearly allowable under the rules and is not misleading. However, the committee is of the opinion that the use of the logo "A Tradition of Success" without a disclaimer is misleading and appears to be a violation of the rules.

John L. Brown, Chair
Ethics Committee
State Bar of South Dakota