WASHINGTON STATE
BAR ASSOCIATION

Advisory Opinion: 202502

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RPCs: 1.17, 7.1

Subject: Use of Non-Practicing Lawyer's Name in Firm Name by the Purchaser of a Law Practice

Summary: *This opinion discusses whether a lawyer who purchases an entire law practice from a lawyer who plans to cease the active practice of law may continue to include the name of that selling lawyer in the firm name following the acquisition. In order to protect clients and the general public from false or misleading communications, the selling lawyer's name may not be used in the firm's name if they are not associated with that firm.*

Facts: A lawyer is acquiring an entire law practice from a lawyer who plans to cease the active practice of law. The purchasing lawyer is not then practicing with, and has not previously practiced with, the selling lawyer. But the purchasing lawyer desires to use the name of the acquired firm or to include the selling lawyer's name in the name of the purchasing lawyer's firm.

Issue Presented: Whether a lawyer who purchases an entire law practice from a lawyer who ceases the active practice of law may continue to include the name of that selling lawyer in the firm name, with or without also using the name of the purchasing lawyer.

Short Answer: The lawyer who purchases an entire law practice from a lawyer who is ceasing the active practice of law may not include the name of the selling lawyer in the firm name if the selling lawyer is not associated with the purchasing lawyer's firm.

Applicable Rules of Professional Conduct:

RPC 1.17 states that a "lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will…." The commentary to RPC 1.17 states that the rule "requires that the seller's entire practice, or an entire area of practice, be sold…." Comment [6] to RPC 1.17 (Washington revision) [1].

RPC 7.1 provides:

> 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 contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

The commentary to RPC 7.1 states, in part:

> [10] A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. *However, it is misleading to use the name of a lawyer or LLLT not associated with the firm or a predecessor of the firm, or the name of an individual who is neither a lawyer nor an LLLT.*

Comment [10] to RPC 7.1 (emphasis added).

Discussion:

If the selling lawyer does not cease the active practice of law, which is not a requirement of RPC 1.17, use of the selling lawyer's name by the purchasing lawyer is prohibited because it would be misleading. See Comment [10] to RPC 7.1; WSBA Advisory Op. 1994 (2002) (firm may not use the name of a former partner in firm name where former partner relocated to California but intended to continue to practice law in California). The question of whether it is misleading to do so if the selling lawyer ceases the active practice of law is more nuanced.[2]

Over the past four decades, the WSBA has issued about two dozen advisory opinions on firm names. All of them were published prior to the repeal of RPC 7.5 in 2018, and none of them are precisely on point with respect to the issue in question. At one time, RPC 7.5 focused specifically on firm names and letterheads. When RPC 7.5 was reserved in 2021, some aspects of the former RPC 7.5 were included in Comment [10] to RPC 7.1, quoted above. The "touchstone of RPC 7.1 is "to prevent clients and the general public from being subjected to false and misleading communications…. So long as a firm name put before the public [is] not materially misleading, when considered as a whole…it would not be objectionable." Hazard, Hodes, Jarvis & Thompson, The Law of Lawyering §63.02 (2024).

Although published before the deletion of RPC 7.5, WSBA Advisory Opinion 2164 (2007) provides the Washington opinion closest to addressing the question of use of a former lawyer's name be a lawyer who purchased that lawyer's practice. It states, in part:

> A firm may not use a firm name that is misleading or implies a partnership where none exists. RPC 7.1; RPC 7.5. Prior opinions of the Committee make clear that a firm may continue to use the name of a former partner where the former partner is deceased, fully retired or inactive, or maintains some ownership stake in the firm. See Informal Opinions 1144 (1987), 1231 (1988), 1571 (1994), 1868 (1999), and 1994 (2002). Since you have sold your interest in the firm and are not fully retired neither you nor your former law partner may use the original name.

Under RPC 1.17, good will is a law firm asset that may be sold by a retiring lawyer. In some jurisdictions the firm name is treated as an element of that good will, which may be conveyed with such a sale so long as care is taken to protect clients and the general public from false or misleading communications about the purchasing lawyer and the withdrawing lawyer. [3] Such jurisdictions allow the name of a lawyer who has ceased practicing law to continue to be included in a firm's name so long as care is taken to prevent the public from being led to believe that the withdrawing lawyer is still practicing law with the firm. [4]

As noted above, Washington's Comment [10] to RPC 7.1 states that "it is misleading to use the name of a lawyer or LLLT not associated with the firm or a predecessor of the firm." [5]

If a selling lawyer continues to actively practice law elsewhere following the sale of a law practice, it is misleading for the purchasing lawyer to use the name of the selling lawyer in the purchasing lawyer's firm name. Based on Comment [10] to RPC 7.1, it is also misleading to use the name of a selling lawyer even if that lawyer ceases actively practicing law, because that lawyer is not associated with the firm or a predecessor of the purchasing lawyer's firm.

It might be argued that when a lawyer purchases a firm from a selling lawyer who ceases practice, the purchasing lawyer should be able to use the name of the withdrawing lawyer on grounds that the selling lawyer was associated with "a predecessor firm." In the opinion of this Committee, that view is at best a strained interpretation of the meaning of "predecessor firm"; accordingly, a purchasing lawyer's use of the selling lawyer's name in those circumstances cannot be reconciled with the last sentence of Comment [10] to RPC 7.5, quoted above.

ENDNOTES

[1] A potentially significant difference between Washington's RPC 1.17 and the ABA's Model Rule 1.17 is that Washington has deleted MR 1.17(a), which requires that the: "[t]he seller [must cease] to engage in the private practice of law, or in the area of practice that has been sold," in the relevant geographic area or jurisdiction.

[2] A lawyer who ceases the active practice of law may formally do so in several ways and assume various types of license statuses under the WSBA Bylaws and the Admission and Practice Rules. For example, a lawyer may voluntarily resign, become an inactive member or a Pro Bono member, or become a judicial member upon taking certain judicial positions. Lawyers may also continue to practice in limited circumstances as Pro Bono members under APR 3(g).

[3] For a discussion of good will in the context of a firm's name, see New York State Bar Association, Committee on Professional Ethics Opinion 1168 (05/13/2019), and Utah State Bar Ethics Advisory Opinion 21-02 (2021)

[4] For example, North Carolina's RPC 1.17 has a Comment [13] that says, in part, that after purchase, a law practice may retain the same name but that the "seller's retirement or discontinuation of affiliation with the law practice must be indicated on letterhead and other communications…to avoid misleading the public as to the seller's relationship to the law practice." That is helpful guidance, although Washington does not have a comparable comment. See also Illinois State Bar Association Professional Conduct Advisory Opinion No. 20-04 (2020).

[5] That language derives from Comment [1] to Model Rule 7.5 as originally adopted it in 1983; it continued as part of the Model Rule Comment until 2018, when Model Rule 7.5 was deleted. At that time, Comment [1] to Model Rule 7.5 was relocated, with some changes, to Comment [5] to Model Rule 7.1. The ABA dropped the sentence that the Washington Supreme Court has chosen to retain, but the Model Rule comment continues to state that "A law firm name or designation is misleading if it implies a connection …with a lawyer not associated with the firm or a predecessor firm [or] with a nonlawyer...."