

Michelle G. Breit (SBN 021439)
OTTESON LAW GROUP
14350 North 87th Street, Suite 190
Scottsdale, Arizona 85260
Phone: 480-646-3434
Fax: 480-646-3438
mbreit@agilityiplaw.com

**IN THE SUPREME COURT
OF THE STATE OF ARIZONA**

IN THE MATTER OF:

PETITION FOR AMENDMENT OF
RULE 42 OF THE ARIZONA RULES OF
THE SUPREME COURT, RULE OF
PROFESSIONAL CONDUCT 7.5(a)

SUPREME COURT
NO. R-

The undersigned counsel petitions the Court, pursuant to Rule 28, Arizona Rules of the Supreme Court, to amend Rule 42, Arizona Rules of the Supreme Court, Rule of Professional Conduct 7.5(a), to eliminate the Rule's prohibition against trade names for law firm names and to follow the American Bar Association's Model Rule of Professional Conduct 7.5. The proposed amendment is attached as Exh. 1. This petition is supported by the accompanying memorandum of points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In 1985, Arizona adopted the Rules of Professional Conduct, Ariz. R.S.Ct. 42 ("Ethical Rules"). The Arizona Ethical Rules followed, in large measure, the

American Bar Association's ("ABA") Model Rules of Professional Conduct of 1983. Arizona's version of Ethical Rule 7.5 adopted in 1985, however, did not include the ABA Model Rule's permissive use of trade names for law firms which the ABA Model Rules adopted in 1983. Specifically, the ABA Model Rules added the permissive use of trade names for law firm names, as long as the trade name is not false or misleading. Arizona instead maintained the prohibition against trade names previously found in the Disciplinary Code that preceded the Rules of Professional Conduct. The Arizona Ethical Rules were again amended in 2003, following an extensive review of all of the Rules by the State Bar of Arizona's Ethical Rules Review Group. Still those amendments did not change the prohibition against the use of trade names by law firms.

Arizona's current prohibition against the use of trade names is counter to the ABA Model Rules of Professional Conduct, counter to the majority of jurisdictions in the United States that have rules regarding law firm names, and poses an unreasonable restraint on national law firms seeking to open offices in Arizona. Under Arizona's current Ethical Rule 7.5, a national firm that uses a trade name in many other states must create some other name just to open an office in Arizona. This scenario actually causes *more* not less consumer confusion regarding who actually owns the firm.

As set forth below, good cause exists for the Court to amend Supreme Court Rule 42, ER 7.5(a) to adopt the ABA Model Rule of Professional Conduct 7.5's language permitting use of trade names by law firms that accurately reflect the firm's services or geographic location and do not falsely imply any affiliation with any government or nonprofit entity.

II. ARGUMENT

A. The Prohibition Against Trade Names Does Not Protect the Public

The purpose of regulating lawyer advertising, including law firm names, is to assure that the public receives only accurate and non-deceptive information about legal services. Thus, states may ban lawyer advertising that is false or misleading. As the U.S. Supreme Court held in *In re R.M.J.*, 455 U.S. 191, 203 (1982):

[W]hen the particular content or method of the advertising suggests that it is inherently misleading or when experience has proven that in fact such advertising is subject to abuse, the states may impose appropriate restrictions. Misleading advertising may be prohibited entirely.

See also Matter of Zang, 154 Ariz. 134, 141, 741 P.2d 267, 174 (1987) (lawyer may be disciplined for false advertising); *see also Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 464 (1978); *Florida Bar v. Went For It Inc.*, 515 U.S. 618 (1995).

At the same time, truthful commercial speech is protected by the First Amendment and, as such, states cannot place unreasonable restrictions on

commercial speech, including lawyer advertising. *See Bates v. Arizona State Bar*, 433 U.S. 350 (1977) (a blanket ban on advertising of routine legal services is unconstitutional). The U.S. Supreme Court, in *Friedman v. Rogers*, 440 U.S. 1 (1979), held that firm or trade names are constitutionally protected as “commercial free speech,” the communicative value of which may be weighed against its potential to deceive or mislead. Although the case pertained to an optometrist's practicing under a trade name, the court's rationale is applicable to other professional services offered under a trade or corporate name, such as law firms.

The ABA added the use of trade names to Ethical Rule 7.5 in 1983, which was a change from the former Disciplinary Code provision that did not permit the use of trade names. There is no empirical or disciplinary record of evidence showing that the use of a trade name by a law firm is inherently deceptive such that there should be a complete ban on trade names. In fact, *the vast majority of states permit the use of trade names by law firms*. Arizona even permits some form of trade name use by law firms under the existing rule because Arizona permits law firms to use the names of deceased partners – even when the deceased partners were never admitted in Arizona. For instance, why are the names of law firms which include deceased partners, such as Perkins Coie, Quarles & Brady, Ballard Spahr or Bryan Cave, less deceptive than DLA Piper, The Scottsdale Law Firm (assuming the firm is in Scottsdale), Bankruptcy Law Group (assuming there are

bankruptcy lawyers in the firm) or ABC Law Firm (assuming there are lawyers in the firm with surnames that begin with “A, B, and C”)?¹

The Federal Trade Commission frequently comments on lawyer advertising restrictions imposed by states and confirms that the restrictions should impose the least restrictive measures on commercial speech that are necessary to assure that consumers receive accurate and non-deceptive information about legal services. *See, e.g., FTC March 23, 2007 Letter to Florida Bar regarding pending rule changes involving lawyer advertising; FTC April 17, 1990 Letter to State Bar of Arizona regarding proposed changes to rules involving lawyer advertising.* As the federal agency mandated with the responsibility to prosecute false and deceptive advertising, it is significant that routinely the FTC encourages bar associations to adopt the *least* restrictive regulations on lawyer commercial speech. Permitting accurate trade name use by Arizona law firms is consistent with the Federal Trade Commission’s guidance and still assures that consumers of legal services receive accurate information about law firms.

If Ethical Rule 7.5 were amended to permit trade names, the language in existing Ethical Rule 7.1 would provide protection for the public from trade names that were false or misleading. A law firm could not, for instance, call itself the

¹ Perkins and Coie are two deceased Washington lawyers, Quarles and Brady are two deceased Wisconsin lawyers, Ballard and Spahr are two deceased Pennsylvania lawyers, and Bryan and Cave are two deceased Missouri lawyers.

“Scottsdale Bankruptcy Firm” if the firm did not practice bankruptcy law in Scottsdale. Similarly, a law firm could not identify itself as “Guaranteed Results Law Firm” because ER 7.1 would prohibit such a name that would create unjustified expectations in consumers. Thus, trade names still would need to comply with ER 7.1 and refrain from names that were false or misleading.

B. The American Bar Association and the Vast Majority of Jurisdictions Permit the Use of Accurate Trade Names for Law Firms

Arizona is one of approximately 18 states that continue to prohibit or restrict the use of trade names for law firms. *See ABA Differences between State Advertising and Solicitation Rules and the ABA Model Rules of Professional Conduct (Sept. 1, 2011)* (relevant pages attached as Exh. 2). Note that the Federal District Court for the Northern District of New York struck down as unconstitutional certain amendments to New York’s Lawyer advertising regulations – including the provision in Section §1200.6(c)(7) that would have prohibited “[. . .]nickname, moniker, motto or trade name that implies an ability to obtain results in a matter.” *Alexander v. Cahill*, 5:07-CV-117, 2007 U.S. Dist. LEXIS 53602, 2007 WL 2120024 (N.D.N.Y. July 20, 2007). The court found the trade name ban overbroad.

C. The Current Arizona Rule May *Cause* Consumer Confusion

Restrictions should protect consumers from false or deceptive advertising but not unreasonably restrict law firms from communicating accurate information to the public. Arizona's current Rule 7.5 trade name ban imposes an unreasonable restraint on national law firms that want to open offices in Arizona by prohibiting their use of all trade names including those that can be or are used in as many as 36 other jurisdictions.

As currently written, Ethical Rule 7.5's trade name ban actually may cause consumer confusion because it requires national law firms that want to open an Arizona office to create a fictitious firm name *just for Arizona* rather than identifying the firm's true business name, used in the rest of the world. Such a requirement actually could cause more consumer confusion than if the national firm simply used its widely recognized firm trade name because the Arizona fictitious name would not accurately identify the affiliation with the national firm and could not disclose the trade name because to do so would violate ER 7.5. Thus, Arizona legal consumers receive *less* accurate information than legal consumers in other states that permit the use of trade names.

III. CONCLUSION

Undersigned counsel respectfully requests that Arizona adopt the ABA Model Rule of Professional Conduct 7.5's language pertaining to the use of trade

names by law firms. The ABA Model Rule provides for reasonable restrictions against the use of false or misleading trade names while authorizing the use of non-deceptive trade names. Such a provision affords consumers accurate information about legal services without unreasonably restricting both the lawyers' First Amendment protections and interstate commerce. For the foregoing reasons, the undersigned requests that the Court amend Supreme Court Rule 42, ER 7.5(a) to permit law firms to use trade names in Arizona that reflect the firm's services or geographic location and do not falsely imply any affiliation with any government or nonprofit entity.

RESPECTFULLY SUBMITTED this 29th day of December, 2011.



Michelle G. Breit

Electronic copy filed with the
Clerk of the Supreme Court of Arizona
on this 29th day of December, 2011.



Exhibit 1

Proposed Revisions to Ethical Rule 7.5(a)

Ariz. R.S.Ct. 42, ER 7.5:

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates ER 7.1. A trade name may ~~not~~ 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.

(b) – no changes

(c) – no changes

(d) – no changes

Exhibit 2

ABA Differences between State Advertising and Solicitation Rules and the ABA Model Rules of Professional Conduct (Sept. 1, 2011)

Differences between State Advertising and Solicitation Rules and the ABA
Model Rules of Professional Conduct (Sept. 1, 2011)*

***Note:** This document reflects the Florida Advertising Rules following the ruling in case number SC08-1181, pending the Court's ruling on additional amendments to rule 4-7.6(b) in case number SC10-1014.

For links to all state ethics rules (including advertising rules), go to
http://www.americanbar.org/groups/professional_responsibility/resources/links_of_interest.html

Table of Contents

Model Rule 7.1 (Page 9)

Prohibition on Using False, Misleading or Nonverifiable Communications about Lawyer's Services

(Ohio)

Notifying Client of Third Parties False or Misleading Communication about Lawyer or Lawyer's Firm

(Oregon)

Prohibition on Advertisements for Specific Types of Cases for Which Lawyer Has Neither Experience Nor Competence

(Missouri, Montana)

Prohibition on Testimonials or Endorsements

(Arkansas, Florida, Indiana, Nevada, Pennsylvania, South Carolina, Wyoming)

Restrictions on Testimonials or Endorsements

(California, Louisiana, Missouri, Montana, New York, Oregon, Rhode Island, South Dakota, Virginia, Wisconsin)

Prohibition on Statements that Cannot be Substantiated or Verified

(District of Columbia, Florida, Ohio, Oregon)

Restrictions on Statements Regarding Past Success

(Florida, Indiana, Louisiana, Missouri, Montana, New Mexico, New York, South Dakota, Texas, Virginia)

Prohibition on Statements that Promise Results

(Florida, Indiana, Louisiana)

Disclaimers and Disclosures Regarding Contingent Fees

(California, Connecticut, Florida, Georgia, Kentucky, Louisiana, Missouri, Montana, Nevada, New York, Pennsylvania, Rhode Island, Texas)

Advertising a Fee for "Routine Services"

(Kentucky)

Prohibition on Description of Fees as "Cut-rate," "Below Cost," "Discount," etc.

(Ohio)

Prohibition on Communications that Create False Expectations or Imply that Lawyer Can Achieve Results by Means that Violate Rules of Professional Conduct or Other Law

(Alabama, Alaska, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, South Carolina, Texas, Virginia, West Virginia, Wisconsin, Wyoming)

Prohibition on Communications that Imply Improper Influence

(Mississippi, Oregon, Texas)

ABA MODEL RULE 7.5

Firm Names and Letterheads

(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.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation 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.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_7_5_firm_names_letterhead.html

DIFFERENCES IN STATE ADVERTISING RULES

Firm Name Must Include Name of One Lawyer In Firm (Georgia, Nebraska, New Jersey)

Georgia Rule 7.5(e)(1): A trade name may be used by a lawyer in private practice if: (1) the trade name includes the name of at least one of the lawyers practicing under said name.

Nebraska Rule 3-507.5(a)(1): A trade name may be used by a lawyer in private practice if the trade name includes the name of at least one of the lawyers practicing under said name. A law firm consisting solely of the name or names of deceased or retired members of the firm does not have to include the name of an active member of the firm.

New Jersey Rule 7.5(a): Except for organizations referred to in R. 1:21-1(d), the name under which a lawyer or law firm practices shall include the full or last names of one or more of the lawyers in the firm or office or the names of a person or persons who have ceased to be associated with the firm through death or retirement.

Use of “& Associates” (New Jersey)

New Jersey Rule 7.5(e): A law firm name may include additional identifying language such as “& Associates” only when such language is accurate and descriptive of the firm. Any firm name including additional identifying language such as “Legal Services” or other similar phrases shall inform all prospective clients in the retainer agreement or other writing that the law firm is not affiliated or associated with a public, quasi-public or charitable organization. However, no firm shall use the phrase “legal aid” in its name or in any additional identifying language.

Prohibition or Restrictions on Trade Names (Arizona, California, Florida, Indiana, Louisiana, Mississippi, Nebraska, Nevada, New Jersey, New York, North Carolina, Ohio, Oregon; South Carolina)

Arizona Rule 7.5(a): A trade name may not be used by a lawyer in private practice.

California Rule 1-400(Standards)(9): Pursuant to rule 1-400(E) the Board of Governors of the State Bar has adopted the following standards, effective May 27, 1989, unless noted otherwise, as forms of “communication” defined in Rule 1-400(A) which are presumed to be in violation of Rule 1-400:A “communication” in the form of a firm name, trade name, fictitious name, or other professional designation used by a member or law firm in private practice which differs materially from any other such designation used by such member or law firm at the same time in the same community.

Florida Rule 4-7.9(b): A lawyer may practice under a trade name if the name is not deceptive and does not imply a connection with a government agency or with a public or charitable legal services organization, does not imply that the firm is something other than a private law firm, and is not false, misleading, or deceptive as set forth in subdivision (c)(1) of rule 4-7.2. A lawyer in private practice may use the term “legal clinic” or “legal services” in conjunction with the lawyer’s own name if the lawyer’s practice is devoted to providing routine legal services for fees that are lower than the prevailing rate in the community for those services.

Florida Rule 4-7.9(c): A lawyer shall not advertise under a trade or fictitious name, except that a lawyer who actually practices under a trade name as authorized by subdivision (b) may use that name in advertisements. A lawyer who advertises under a trade or fictitious name shall be in violation of this rule unless the same name is the law firm name that appears on the lawyer’s letterhead, business cards, office sign, and fee contracts, and appears with the lawyer’s signature on pleadings and other legal documents.

Indiana Rule 7.5(a)(4): A trade name may be used by a lawyer in private practice subject to the following requirements:

(i) the name shall not imply a connection with a government agency or with a public or charitable legal services organization and shall not otherwise violate of Rule 7.1.

(ii) the name shall include the name of a lawyer (or the name of a de-ceased or retired member of the firm, or of a predecessor firm in a manner that complies with subparagraph (2) above).

(iii) the name shall not include words other than words that comply with clause (ii) above and words that:

- (A) identify the field of law in which the firm concentrates its work, or
- (B) describe the geographic location of its offices, or
- (C) indicate a language fluency.

Louisiana Rule 7.2(c)(1)(L): utilizes a nickname, moniker, motto or trade name that states or implies an ability to obtain results in a matter.

Louisiana Rule 7.10(b): A lawyer or law firm shall not practice under a trade name that implies a connection with a government agency, public or charitable services organization or other professional association, that implies that the firm is something other than a private law firm, or that is otherwise in violation of subdivision (c)(1) of Rule 7.2.

Louisiana Rule 7.10(c): A lawyer shall not advertise under a trade or fictitious name, except that a lawyer who actually practices under a trade name as authorized by subdivision (b) may use that name in advertisements. A lawyer who advertises under a trade or fictitious name shall be in violation of this Rule unless the same name is the law firm name that appears on the lawyer's letterhead, business cards, office sign and fee contracts and appears with the lawyer's signature on pleadings and other legal documents.

Mississippi Rule 7.7(b): A lawyer shall not practice under a trade or fictitious name or a name that is misleading as to the identity of the lawyer or lawyers practicing under such name. A lawyer in private practice may use the term "legal clinic" or "legal services" in conjunction with the lawyer's own name if the lawyer's practice is devoted to providing routine legal services for fees that are lower than the prevailing rate in the legal community for those services.

Nebraska Rule 3-507.5(a)(1): A trade name may be used by a lawyer in private practice if the trade name includes the name of at least one of the lawyers practicing under said name. A law firm consisting solely of the name or names of deceased or retired members of the firm does not have to include the name of an active member of the firm.

Nevada Rule 7.5(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.

New Jersey Rule 7.5(f): In any case in which an organization practices under a trade name as permitted by paragraph (a) above, the name or names of one or more of its principally responsible attorneys, licensed to practice in this State, shall be displayed on all letterheads, signs, advertisements and cards or other places where the trade name is used.

New York Rule 7.5(b): A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation shall contain "P.C." or such symbols permitted by law, the name of a limited liability company or partnership shall contain "L.L.C.," "L.L.P." or such symbols permitted by law, and, if otherwise lawful, a firm may use as, or continue to include in its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Such terms as "legal clinic," "legal aid," "legal service office," "legal assistance office," "defender office" and the like, may be used only by qualified legal assistance organizations, except that the term "legal clinic" may be used by any lawyer or law firm provided the name of a participating lawyer or firm is incorporated therein. [...]

North Carolina Rule 7.5(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 false or misleading in violation of Rule 7.1. Every trade name used by a law firm shall be registered with the North Carolina State Bar for a determination of whether the name is misleading.

Ohio Rule 7.5(a): A lawyer in private practice shall not practice under a trade name, a name that is misleading as to identity of the lawyer or lawyers practicing under the name, or a firm name containing names other than those of one or more of the lawyer sin the firm, except that the name

of a professional corporation or association, legal clinic, limited liability company, or registered partnership shall contain symbols indicating the nature of the organization as required by Gov. Bar R. III. If otherwise lawful, a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession.

Oregon Rule 7.5(c)(2): A lawyer in private practice may use a trade name in private practice if the name does not state or imply a connection with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

South Carolina Rule 7.1(e): A lawyer shall not make false, misleading, deceptive, or unfair communications about the lawyer or the lawyer's services. A communication violates this rule if it:

(e) contains a nickname, moniker, or trade name that implies an ability to obtain results in a matter.

Provisions Regarding Use of “P.C.,” “L.L.P.,” “L.L.C.,” “P.A.” and “Legal Clinic” (Florida, Hawaii, Indiana, Mississippi, New York, Texas)

Florida Rule 4-7.9(b): A lawyer in private practice may use the term “legal clinic” or “legal services” in conjunction with the lawyer’s own name if the lawyer’s practice is devoted to providing routine legal services for fees that are lower than the prevailing rate in the community for those services.

Hawaii Rule 7.5(c): The name of a professional law corporation or limited liability law company, limited liability law partnership or other such lawful organization shall include the words “A Law Corporation,” “A Limited Liability Law Company,” “A Limited Liability Law Partnership,” or other appropriate designation, whenever applicable.

Indiana Rule 7.5(a)(2): (2) The name of a professional corporation, professional association, limited liability partnership, or limited liability company may contain, “P.C.,” “P.A.,” “LLP,” or “LLC” or similar symbols indicating the nature of the organization.

Mississippi Rule 7.7(b): A lawyer shall not practice under a trade or fictitious name or a name that is misleading as to the identity of the lawyer or lawyers practicing under such name. A lawyer in private practice may use the term “legal clinic” or “legal services” in conjunction with the lawyer’s own name if the lawyer's practice is devoted to providing routine legal services for fees that are lower than the prevailing rate in the legal community for those services.

New York Rule 7.5(b): A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation shall contain “P.C.” or such symbols permitted by law, the name of a limited liability company or partnership shall contain “L.L.C.,” “L.L.P.” or such symbols permitted by law, and, if otherwise lawful, a firm may use as, or continue to include in its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Such terms as “legal clinic,” “legal aid,” “legal service office,” “legal assistance office,” “defender office” and the like, may be used only by qualified legal assistance organizations, except that the term “legal clinic” may be used by any lawyer or law firm provided the name of a participating lawyer or firm is incorporated therein. [...]

Texas Rule 7.01(a): A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the names of a professional corporation, professional association, limited liability partnership, or professional limited liability company may contain “P.C.,” “L.L.P.,” “P.L.L.C.,” or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Nothing herein shall prohibit a married woman from practicing under her maiden name.

Restrictions on Domain Names (New York)

New York Rule 7.5(e) & (f):

(e) A lawyer or law firm may utilize a domain name for an internet web site that does not include the name of the lawyer or the law firm provided:

- (1) all pages of the web site clearly and conspicuously include the actual name of the lawyer or law firm;
- (2) the lawyer or law firm in no way attempts to engage in the practice of law using the domain name;
- (3) the domain name does not imply an ability to obtain results in a matter; and
- (4) the domain name does not otherwise violate these Rules.

(f) A lawyer or law firm may utilize a telephone number which contains a domain name, nickname, moniker or motto that does not otherwise violate these Rules.

Ancillary Businesses (Iowa)

Iowa Rule 32:7:5(f): A lawyer who is engaged both in the practice of law and another profession or business shall not so indicate on the lawyer’s letterhead, office sign, or professional card, and shall not be identified as a lawyer in any publication in connection with the lawyer’s other profession or business.

Disclosure of Professional Liability Insurance (South Dakota)

South Dakota Rule 7.5(e): The disclosure required in Rule 1.4(c)(1) or (2) [Rule 1.4(c) requires disclosure on lawyer’s letterhead of the absence of professional liability insurance of at least \$100,000] shall be in black ink with type no smaller than the type used for showing the individual lawyer’s names.

Note: Four other states (Alaska Rule 1.4(c), New Hampshire Rule 1.19, Ohio Rule 1.4(c), and Pennsylvania Rule 1.4(c)) have adopted professional conduct rules requiring lawyers to notify clients, in writing, if the lawyer does not maintain professional liability insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate).

Restrictions on Use of “Of Counsel” (Alaska, California, Kentucky, New York, Ohio, Oregon)

Alaska Rule 7.5(e): The term “of counsel” shall be used only to refer to a lawyer who has a close continuing relationship with the firm.

California Rule 1-400(Standards)(8): Pursuant to rule 1-400(E) the Board of Governors of the State Bar has adopted the following standards, effective May 27, 1989, unless noted otherwise, as forms of “communication” defined in Rule 1-400(A) which are presumed to be in violation of Rule 1-400: A “communication” which states or implies that a member or law firm is “of counsel” to another lawyer or law firm unless the former has a relationship with the latter (other than as a partner or associate, or officer or shareholder pursuant to Business and Professions Code sections 6160-6172) which is close, personal, continuous, and regular.

Kentucky SCR 3.130 (7.02)(1)(f): A lawyer may be designated “Of Counsel” on a letterhead if there is a continuing relationship with a lawyer or law firm, other than as a partner or associate.

New York Rule 7.5(a)(4): A lawyer or law firm may be designated “Of Counsel” on a letterhead if there is a continuing relationship with a lawyer or law firm, other than as a partner or associate.

Ohio Rule 7.5 Comment [3]: A lawyer may be designated “Of Counsel” if the lawyer has a continuing relationship with a lawyer or law firm, other than as a partner or associate.

Oregon Rule 7.5(b): A lawyer may be designated “Of Counsel” on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as a partner or associate. A lawyer may be designated as “General Counsel” or by a similar professional reference on stationery of a client if the lawyer or the lawyer’s firm devotes a substantial amount of professional time in the representation of the client.

Restrictions on Use of “General Counsel” (Kentucky, New York)

Kentucky SCR 3.130(7.02)(1)(f): A lawyer or law firm may be designated as “General Counsel” or by similar professional reference on stationery of a client if the lawyer or the firm devotes a substantial amount of professional time in the representation of that client.

New York Rule 7.5(a)(4): A lawyer or law firm may be designated as “General Counsel” or by similar professional reference on stationery of a client if the lawyer or law firm devotes a substantial amount of professional time in the representation of that client.

Provisions on Use of Deceased or Retired Firm Members’ Names (Georgia, Hawaii, Indiana, Kentucky, Louisiana, Nebraska, New York, Ohio, Oregon, Pennsylvania, Texas)

Georgia Rule 7.5(e)(1): A law firm name consisting solely of the name or names of deceased or retired members of the firm does not have to include the name of an active member of the firm.

Hawaii Rule 7.5(b): A law firm may use as, or continue to include in, its name the name or names of one or more deceased or retired partners of the firm in a continuing line of succession; provided that where none of the names comprising a firm name is the name of a current partner who is on the list of active attorneys maintained by the Hawai’i State Bar, there shall be at least one supervisor, manager, partner, or shareholder of the firm who is on the list of active attorneys maintained by the bar.

Indiana Rule 7.5(a)(3): If otherwise lawful a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. See Admission & Discipline Rule 27.

Kentucky SCR 3.130(7.02)(1)(f): A letterhead of a law firm may also give . . . names and dates relating to deceased and retired members.

Louisiana Rule 7.10(g): If otherwise lawful and permitted under these Rules, a law firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the law firm, or of a predecessor firm in a continuing line of succession.

Nebraska Rule 3-507.5(a)(1): A trade name may be used by a lawyer in private practice if the trade name includes the name of at least one of the lawyers practicing under said name. A law firm consisting solely of the name or names of deceased or retired members of the firm does not have to include the name of an active member of the firm.

New York Rule 7.5(a)(4): A letterhead of a law firm may also give . . . names and dates relating to deceased and retired members.

New York Rule 7.5(b): A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation shall contain “P.C.” or such symbols permitted by law, the name of a limited liability company or partnership shall contain “L.L.C.,” “L.L.P.” or such symbols permitted by law, and, if otherwise lawful, a firm may use as, or continue to include in its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Such terms as “legal clinic,” “legal aid,” “legal service office,” “legal assistance office,” “defender office” and the like, may be used only by qualified legal assistance organizations, except that the term “legal clinic” may be used by any lawyer or law firm provided the name of a participating lawyer or firm is incorporated therein. [...]

Ohio 7.5(a) If otherwise lawful, a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession.

Oregon Rule 7.5(c)(3): A lawyer in private practice may use in a firm name the name or names of one or more of the retiring, deceased or retired members of the firm or a predecessor law firm in a continuing line of succession.

Pennsylvania Rule 7.5(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, government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1. If otherwise lawful a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession.

Texas Rule 7.01(a): A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the names of a professional corporation, professional association, limited liability partnership, or professional limited liability company may contain “P.C.,” “L.L.P.,” “P.L.L.C.,” or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members

of the firm or of a predecessor firm in a continuing line of succession. Nothing herein shall prohibit a married woman from practicing under her maiden name.

Prohibition on Use of Name of Nonlawyer (New York)

New York Rule 7.5(b): A lawyer or law firm may not include the name of a nonlawyer in its firm name, nor may a lawyer or law firm that has a contractual relationship with a nonlegal professional or nonlegal professional service firm pursuant to Rule 5.8 to provide legal and other professional services on a systematic and continuing basis include in its firm name the name of the nonlegal professional service firm or any individual nonlegal professional affiliated therewith.

Prohibition on Use of Name of Lawyer Disbarred or Suspended for Period of at Least Six Months (Kentucky, Rhode Island)

Kentucky SCR 3.130(7.50)(5): The name of a lawyer who is suspended by the Supreme Court from the practice of law may not be used by the law firm in any manner until the lawyer is reinstated. A lawyer who has been permanently disbarred shall not be included in a firm name, letterhead, or any other professional designation or advertisement.

Rhode Island Rule 7.5(c): The name of a lawyer holding a public office during any substantial period in which the lawyer is not actively and regularly practicing with the firm, and the name of a lawyer who is disbarred or suspended from the practice of law for a period of at least six (6) months, shall not be used in the name of a law firm or in communication on its behalf.

Legal Assistants' Names on Letterhead or Business Card (Alabama, North Dakota)

Alabama Rule 7.6: A lawyer shall not cause or permit a business card of a nonlawyer which contains the lawyer's or firm's name to contain a false or misleading statement or omission to the effect that the nonlawyer is a lawyer. A business card of a nonlawyer is not false and misleading which clearly identifies the nonlawyer as a "Legal Assistant," provided that the individual is employed in that capacity by a lawyer or law firm, that the lawyer or law firm supervises and is responsible for the law related tasks assigned to and performed by such individual, and that the lawyer or law firm has authorized the use of such cards.

North Dakota Rule 7.5(e): A lawyer may identify legal assistants on the lawyer's letterhead and on business cards identifying the lawyer's firm, provided the legal assistant's status is clearly identified.

Insurance Staff Attorneys (Florida)

Florida Rule 4-7.9(g): Where otherwise consistent with these rules, lawyers who practice law as employees within a separate unit of a liability insurer representing others pursuant to policies of liability insurance may practice under a name that does not constitute a material misrepresentation. In order for the use of a name other than the name of the insurer not to constitute a material misrepresentation, all lawyers in the unit must comply with all of the following:

(1) the firm name must include the name of a lawyer who has supervisory responsibility for all lawyers in the unit;

- (2) the office entry signs, letterhead, business cards, websites, announcements, advertising, and listings or entries in a law list or bar publication bearing the name must disclose that the lawyers in the unit are employees of the insurer;
- (3) the name of the insurer and the employment relationship must be disclosed to all insured clients and prospective clients of the lawyers, and must be disclosed in the official file at the lawyers' first appearance in the tribunal in which the lawyers appear under such name;
- (4) the offices, personnel, and records of the unit must be functionally and physically separate from other operations of the insurer to the extent that would be required by these rules if the lawyers were private practitioners sharing space with the insurer; and
- (5) additional disclosure should occur whenever the lawyer knows or reasonably should know that the lawyer's role is misunderstood by the insured client or prospective clients.

Omits Portion of ABA Model 7.5(a) Regarding Permissible Use of Trade Names by Lawyers in Private Practice (Kentucky)

Kentucky Rule SCR 3.130(7.50)(1): A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.15.

Omits ABA Model Rule 7.5(d) Permitting Lawyers to State or Imply that They Practice in a Partnership or Other Organization Only When That is the Fact (Alabama)

Exception for Lawyers Serving in State Legislature (Nevada)

Nevada Rule 7.5(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. This provision does not apply to a lawyer who takes a brief hiatus from practice to serve as an elected member of the Nevada State Legislature when the legislature is in session.

Allows Mention of Other Jurisdictions Where Admitted to Practice (Alabama)

Alabama Rule 7.5(c): A lawyer or law firm may indicate on any letterhead or other communication permitted by these rules other jurisdictions in which the lawyer or the members or associates of the law firm are admitted to practice.

Restrictions on Lawyers Practicing Out of Same Office Who Are Not Partners (Washington)

Washington Comment [3]: Lawyers practicing out of the same office who are not partners, shareholders of a professional corporation, or members of a professional limited liability company or partnership may not join their names together. Lawyers who are not 1) partners, shareholders of a professional corporation, or members of a professional limited liability company or partnership, or 2) employees of a sole proprietorship, partnership, professional corporation, or members of a professional limited liability company or partnership or other organization, or 3) in the relationship of being "Of Counsel" to a sole proprietorship, partnership, professional corporation, or members of a professional limited liability company or partnership or other organization, must have separate letterheads, cards and pleading paper, and must sign their names individually at the end of all pleadings and correspondence and not in conjunction with the names of other lawyers.

Disclaimer Not Sufficient When Name Implies Partnership (Wyoming)

Wyoming Rule 7.5(d): Lawyers shall clearly and accurately state the organizational structure of the organization in which they practice. Lawyer may not state or imply that they practice in a partnership, firm or other organization if that is not the fact. If lawyers use a name or designation that implies they are practicing in a partnership, firm or other organization, when, in fact, they are not, adding a disclaimer such as “not a partnership” or “an association of sole practitioners” shall not render the name or designation permissible under Rule 7.4.

Penalty for Violation (Georgia)

Georgia Rule 7.5: The maximum penalty for a violation of this Rule is a public reprimand.