

Formal Opinion #126

The Committee has been asked to interpret IRPC 7.2(d), which states, in part:

**Rule 7.2      Advertising**

\*   \*   \*

- d) Any communication made pursuant to this rule shall include the name of at least one lawyer responsible for its content.

Specifically, the Committee is asked the following questions:

- a) If a lawyer practices under a trade name, such as "South Side Law Firm" is that trade name considered the "name of at least one lawyer" for the purpose of this rule?
- b) Assuming a lawyer practices under a firm name that contains the lawyer's last name only--i.e. "Doe Law Offices," is "Doe" sufficient for the purpose of this rule?
- c) If a law firm maintains branch offices, may the "name" be the name of a lawyer who does not practice in the branch office that is being advertised?

IRPC 7.2(d) is identical to the American Bar Association's Rule 7.2(d), from the Model Rules of Professional Conduct. The Committee could envision at least two reasons that 7.2(d) was enacted: to inform the public of the identity of the specific lawyer with whom it is dealing, and/or to allow the relevant bar disciplinary agency to assign responsibility for advertisements that violate prescribed rules.

The distinction is important, because the bar disciplinary agency would presumably have a better capacity to determine the responsible party in the event a question arose.

The legislative history of the ABA Model Rules is contained in "The Legislative History of the Model Rules of Professional Conduct: Their Development in the ABA House of Delegates," published by the ABA Center for Professional Responsibility, in 1987.

Page 179 of the above-cited book reveals that paragraph (d) was added as an amendment to Rule 7.2 during the February 1983 ABA Midyear Meeting:

"The purpose of the addition, requiring that any advertising include the name of at least one lawyer responsible for its content, was to ensure that the public would know who was accountable for the content of the advertising."

There are no reported cases further construing section 7.2(d).

In light of the purpose of the Rule, the Committee answers the questions as follows:

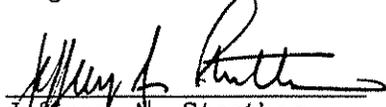
- a) Including only a trade name would not satisfy the requirement of the rule. The public would not be sufficiently informed about the identity of the lawyer, and the plain meaning of the rule requires the use of a name.
- b) This is a closer question. It can be argued that "Doe Law Office" identifies "Doe" as the responsible lawyer, and that the requirements of 7.2(d) would be met. In the Committee's judgment, however, the lawyer's full professional name is required to provide the public with sufficient information. One significant reason for this holding is that the public not be confused among the various "Does" practicing in the locale. While it is true that several "John Does" may be practicing in the same area, there would be a sufficient narrowing to provide meaningful identification. Further, there is no practical way to distinguish between various "John Does."

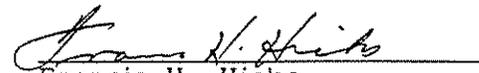
It is important to elaborate on the term "full professional name." Many lawyers refer to themselves professionally by their initials and last name, i.e. "J.W. Doe." However the lawyer is identified in professional dealings, in pleadings, on correspondence, would be his/her "full professional name," and such identification would be appropriate for the purpose of this rule.

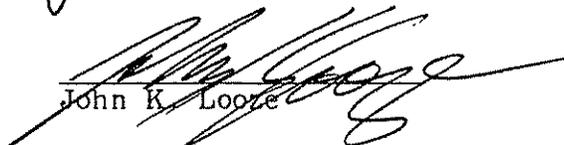
Finally, it is important to define the scope of "advertising." Public communication for the purpose of promoting the lawyer's practice is considered advertising. Thus, a lawyer's letterhead, firm name or office building sign would not ordinarily be considered advertising, unless it was additionally being used for that purpose. Consequently, this opinion would not inhibit a firm's ability to refer to itself as "Doe, Roe and Hoe." It would simply mean that if "Doe, Roe and Hoe" were to advertise that they would need someplace in the advertisement to include the name of at least one lawyer responsible for the advertisement's content.

- c) Yes. As long as the responsible lawyer is an active practicing member of the Idaho State Bar, and a member of the firm.

August 27, 1988

  
Jeffrey A. Strother  
Chairman

  
Francis H. Hicks

  
John K. Looze