Opinion #131

A lawyer ("Lawyer C") has written to ask the Committee the following question:

> After working as an associate with the law firm of A and B, Chartered, I received from the principals of that corporation an interest in the corporation. The name of the firm was then changed to A, B and C , Chartered. The name of the corporation remained as A and B, Chartered. In September of 1987, I gave back to the principals of the corporation the interest I had received in the corporation, and I am now an employee working solely on a commission basis. The name of the corporation has recently been changed to A, B, C and D, Chartered.
>
> The question presented is whether it is permissible under Rule 7.5 for my name to be continued as a part of the firm name?

IRPC 7.5(d) states:

> Rule 7.5 Firm Names and Letterheads
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> * * * * *
>
> (d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

The comment to Rule 7.5 does not address the instant question, nor are there any reported Idaho cases or ethics opinions on point.

IRPC 7.1 is also a consideration in this question, as a lawyer is prohibited by that rule from making "any false or misleading communication about the lawyer of the lawyer's services."

Other jurisdictions are in general agreement that non-associated lawyers, i.e. lawyers who are only office sharing, are subject to discipline for holding

themselves out as "A&B, attorneys at law." There is a split of authority, however, on the question of whether associate lawyers may be included in the firm name.

Michigan (CI-730) and South Carolina (Opinion 85-12) have prohibited the use of associate's names in firm titles, while Connecticut (Opinion 82-3) has approved the practice. The former two reason that the title is misleading, while the latter suggests that the limited liability provided by a corporate structure lessens the concern that a client could be misled about who is financially responsible for the firm and its acts.

We believe that the resolution of this question turns on whether including a lawyer who is not a principal in the firm name is "misleading." Resolution of that question must be sought in terms of the reasonable expectation of a client seeking or employing the services of a lawyer.

We have previously addressed the subject of client expectations in Formal Opinion 123, in that context discussing the location of a lawyer's office.

It is our opinion that a lawyer's name in the firm title suggests to a client or prospective client that the lawyer has a proprietary or ownership interest in the firm. Some clients consider it relevant whether a lawyer maintains some ultimate financial stake in the handling of case. Some clients prefer to deal only with "partners," and would assume that a named lawyer is such a lawyer.

It is our opinion that a lawyer's name in the firm title suggests that the lawyer is a "boss" rather than an employee. While a client might be inclined to protest to a partner about the unsatisfactory performance of an employee, he/she might not be so inclined if the lawyer is thought to also be a partner.

For the foregoing reasons, it is our opinion that a lawyer who does not hold an ownership interest in an association of lawyers should not be included in the firm name, as such a designation would be misleading and a violation of IRPC 7.1.

Dated this 11th day of November, 1989.

John K. Looze, Chairman

Brian L. Ballard

Robert A. Anderson