OPINION NO. 20

Use of the Word "Associates" in a Law Firm Name

The use of the word "Associates" or the phrase "& Associates" in a law firm name, letterhead, or other professional designation is false and misleading if the use conveys the impression the law firm has more attorneys practicing law in the firm than is actually the case.

Adopted: June 18, 2009.

Comment

Subject to qualifications below, the use of the word "Associates" in a law firm name, letterhead, or other professional designation -- such as "Doe Associates" -- is false and misleading if there are not at least two licensed attorneys practicing law with the firm. Similarly, the use of the phrase "& Associates" in a firm name, letterhead, or other professional designation -- such as "Doe & Associates" -- is false and misleading if there are not at least three licensed attorneys practicing law with the firm.

Rule 7.5(a), Minnesota Rules of Professional Conduct ("MRPC"), states:

> *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 ... is not otherwise in violation of Rule 7.1.*

Comment 1 to Rule 7.5, MRPC, states, in pertinent part, that "the use of trade names ... is acceptable so long as it is not misleading."

Rule 7.1, MRPC, states:

> *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.*

Comment 2 to Rule 7.1, MRPC, provides:

> *Truthful statements that are misleading are also prohibited by this rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.*

While the word "Associates" and the phrase "& Associates" undoubtedly have other meanings and connotations in other contexts, in the practice of law the word and the phrase have been used and are perceived as referring to an attorney practicing law in a law firm. See In re Sussman, 405 P.2d 355, 356 (Or. 1965) ("Principally through custom the word ["associates"] when used on the letterheads of law firms has come to be regarded as describing those who are employees of the firm. Because the word has acquired this special significance in connection with the practice of law the use of the word to describe lawyer relationships other than that of employer-employee is likely to be misleading."); St. B. of N.M. Ethics Advisory Comm., Formal Op. 2006-1 (2006) ("It is well accepted in the legal community that an 'associate' is an attorney that works for a firm. 'Associates,' at least in the legal context, do not include support staff such as legal assistants or investigators."); Ass'n of the B. of the City of N.Y. Comm. on Prof'l & Jud. Ethics, Formal Op. 1996-8 (1996), 1996 WL 416301 ("[T]he term ['associate'] has been interpreted by courts and

other ethics committees to mean a salaried lawyer-employee who is not a partner of a firm."); Utah St. B. Ethics Advisory Op. Comm., Op. 04-03 (2004), 2004 WL 1304775 ("We believe that, if a member of the public examined a firm name such as 'John Doe & Associates," he would conclude that John Doe works regularly with at least two other lawyers.").

While some members of the public may care little about the number of attorneys practicing law at a firm, clearly some members of the public seeking legal counsel do care whether there is more than one attorney at a firm available to provide legal services. "A client may wish to be represented by a law firm comprised of several or many lawyers, and the implications of the law firm name may affect the client's decision. Any communication that suggests multiple lawyers creates the appearance that the totality of the lawyers of the law firm could and would be available to render legal counsel to any prospective client ...." Cal. St. B. Standing Comm. on Prof'l Responsibility & Conduct, Formal Op. 1986-90 (1986), 1986 WL 69070 (opining that solo practitioners may not ethically advertise using a group trade name such as "XYZ Associates" unless the advertisement affirmatively discloses they are solo practitioners). A law firm name which suggests there are multiple attorneys to service a client's needs when there is only one attorney is inherently misleading.

The Board's opinion is consistent with decisions and ethics opinions from other jurisdictions which have held that the use of "associates" in the name of a law firm with one practicing lawyer is false and misleading. See, e.g., In re Mitchell, 614 S.E.2d 634 (S.C. 2005) (holding a solo practitioner made false and misleading communications by using the word "associates" in his form name); In re Brandt, 670 N.W.2d 552, 554-55 (Wis. 2003) (solo practitioner holding himself out as "Brandt & Associates" was in violation of ethics rule prohibiting false and misleading communications); Portage County B. Ass'n v. Mitchell, 800 N.E.2d 1106 (Ohio 2003) (solo practitioner engaged in misleading conduct by holding himself out as "Mitchell and Associates"); Office of Disciplinary Counsel v. Furth, 754 N.E.2d 219, 224, 231 (Ohio 2001) (a solo practitioner's use of letterhead referring to his firm as "Tom Furth and Associates, Attorneys & Counselors at Law" was misleading); S.C. B. Ethics Advisory Comm., Op. 05-19 (2005), 2005 WL 3873354 (opining that a solo practitioner's use of a firm name such as "John Doe and Associates, P.A." is misleading); Utah St. B. Ethics Advisory Op. Comm., Op. 138 (1994), 1994 WL 579848 ("[A] sole practitioner may not use a firm name of the type 'Doe & Associates' if he has no associated attorneys, even if the firm formerly had such associates or employs one or more associated nonlawyers such as paralegals or investigators.").

The use of "Associates" or "& Associates" in a firm name, letterhead, or other professional designation by lawyers who share office space or who associate with other lawyers on a particular legal matter but who do not otherwise practice together as a law firm is false and misleading.

Whether or not a law firm name using the word "Associates" or the phrase "& Associates" is false and misleading will depend on the particular facts and circumstances of each case. For example, there may be circumstances where three attorneys with a law firm name such as "Doe & Associates" may lose one of the firm's attorneys. In that event, if another attorney joins the firm within a reasonable period of time thereafter, or if the firm reasonably and objectively anticipates another attorney joining the firm within a reasonable period of time, it is not false or misleading for the firm to continue using "& Associates" in its name during the interim period. If neither circumstance exists, the continued use of "& Associates" would be considered false and misleading. In addition, there may be circumstances where one or more of the attorneys practicing with a firm may be working part-time. As long as the requisite minimum number of attorneys, part-time or otherwise, regularly and actively practice with the firm, the use of "Associates" or "& Associates" would not be considered false or misleading.

The proper use of "Associates" or "& Associates" in a firm name, letterhead, or other professional designation previously has not been the subject of guidance from the Board. Therefore, the Office of Lawyers Professional Responsibility will defer invoking this opinion in disciplinary proceedings under Rules 7.1 and 7.5, MRPC, until January 1, 2010. For the same reason, to the extent a lawyer has already contracted for an advertisement or other promotional material using a name contrary to Opinion No. 20, the continued availability of the advertisement or other material for the duration of the contract term should not be the basis for discipline.