



Opinion No. 605, March 2011

QUESTION PRESENTED

Under the Texas Disciplinary Rules of Professional Conduct, may the remaining lawyers in a law firm continue to use, in the name of their firm, the name of a lawyer who left the firm to practice independently from the firm and who has consented to the law firm's continuing use of his name in the firm name?

Statement of Facts

Two lawyers, Lawyer A and Lawyer B, practiced law under the firm name "A & B, LLC." Lawyer A left the firm to open his own law practice and signed an agreement permitting Lawyer B to use the name "A & B, LLC" as the name of Lawyer B's firm. Lawyer B continues to correspond with existing clients, adverse parties, courts, and the public and to sign pleadings using the name "A & B, LLC." Since leaving the firm, Lawyer A has practiced under the name "A, Attorney at Law."

Discussion

Rule 7.01 of the Texas Disciplinary Rules of Professional Conduct provides in pertinent part:

- (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 ... 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. ...
- (d) A lawyer shall not hold himself or herself out as being a partner, shareholder, or associate with one or more other lawyers unless they are in fact partners, shareholders, or associates.

In the absence of a definition of a term in the Texas Disciplinary Rules, words are to be given their ordinary meaning. The ordinary and customary meaning of the word "retire" with respect to a lawyer is to "withdraw from one's position or occupation" or to "conclude one's working or professional career." Merriam-Webster's Collegiate Dictionary (11th ed. 2003). In the facts presented, Lawyer A left his law firm, not to terminate his practice of law, but to continue his law practice independently from the law firm. In any ordinary sense of the word "retire," Lawyer A did not "retire" and he is not a "retired" member of the firm for purposes of the exception stated in Rule 7.01(a) for "retired members of the firm." The situation here may be contrasted with the situation considered in Professional Ethics Committee Opinion 466 (October 1990). In Opinion 466, a lawyer terminated his practice of law pursuant to an agreement with his law firm that allowed the law firm to continue to use the lawyer's name in the firm name, and "[a]fter several years" the lawyer determined to return to law practice in his own name. Opinion 466 concluded that, in the circumstances there considered, including the fact that the lawyer had "retired" from his law firm, there was no violation of the Texas Disciplinary Rules if the lawyer's former law firm continued to use the lawyer's name in the firm name after the lawyer returned to the practice of law, provided that the law firm did not take any action that would mislead clients or the public as to the current relationship between the lawyer and the law firm.

In this case, since Lawyer A did not retire from practicing law, the exception in Rule 7.01(a) for the use of a retired lawyer's name in a firm name does not apply. Accordingly, the continued use of the name "A & B, LLC" by Lawyer B or other lawyers employed by or associated with Lawyer B is a violation of paragraphs (a) and (d) of Rule 7.01. This conclusion is not affected by any consent that may have been given by Lawyer A. In addition, since Lawyer A continues to practice law independently from Lawyer B's law firm, the use by Lawyer B and his firm of Lawyer A's name in the firm name constitutes a false or misleading communication about the legal services of Lawyer B and his firm within the meaning of Rule 7.02(a) of the Texas Disciplinary Rules of Professional Conduct.

Conclusion

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer or lawyers remaining in a law firm are not permitted to continue to use in their firm name the name of a lawyer who has left the firm to open his own law practice. This conclusion is not affected by whether or not the lawyer who left the firm has consented to such arrangement. ❖

The Supreme Court of Texas appoints the nine members of the Professional Ethics Committee for the State Bar of Texas from members of the bar and the judiciary. The Court also appoints the committee's chair. According to Section 81.092(c) of the Texas Government Code, "Committee opinions are not binding on the supreme court."