



Opinion 591, January 2010

QUESTION PRESENTED

Is it permissible under the Texas Disciplinary Rules of Professional Conduct for three law firms with different names to advertise cooperatively using the name of one of the law firms followed by the word "Group"?

Statement of Facts

Three law firms, the Jones Smith Law Firm, the Johnson Davis Law Firm, and the Morris Law Firm, wish to advertise cooperatively under the name "Jones Smith Group." (All names used in this opinion are for illustrative purposes and do not relate to actual law firms.) The "Jones Smith Group" is not a law firm. None of the three law firms individually uses the name "Jones Smith Group." The three law firms practice in adjoining offices, share expenses, and their practices are closely related. All three law firms participate in many of the cases originated by each of the firms individually. This participation is pursuant to a written disclosure and consent agreement that is entered into by the client and the originating law firm and that discloses the association of other lawyers or law firms as required by Rule 1.04(f) of the Texas Disciplinary Rules of Professional Conduct. Each of the three law firms advertises under its own name.

The proposed advertising arrangement using the name "Jones Smith Group" would be in addition to individual firm advertising. Each advertisement for the "Jones Smith Group" would state that "Jones Smith Group" is not a law firm or a partnership and that the "Jones Smith Group" is composed of "Independent Law Firms Practicing Cooperatively," and each advertisement would specifically identify the three law firms included in the group.

Discussion

Rule 7.04(o) of the Texas Disciplinary Rules of Professional Conduct permits

lawyers to advertise as part of an advertising cooperative or venture of two or more lawyers not in the same firm so long as the requirements set out in the Rule are met. Under Rule 7.04(o), each such cooperative advertisement must meet specified requirements including the requirement of 7.04(o)(5) that the advertisement "does not otherwise violate the Texas Disciplinary Rules of Professional Conduct."

Thus, application of Rule 7.04(o)(5) in the factual situation presented requires consideration of other Rules. Rule 7.01(a) in pertinent part provides:

(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. ...

Exceptions stated in Rule 7.01(a) (relating to the use of abbreviations indicating the nature of the firm, the use of the names of deceased or retired lawyers of the firm or predecessors, and a married woman's use of her maiden name) do not apply to the type of name here considered. Rule 7.01(e) prohibits a lawyer from using, in advertising in the public media or in seeking professional employment, any "trade or fictitious name" except for a firm name that is permitted under Rule 7.01(a) and that is used in the lawyer's letterhead, business cards, office sign and other aspects of the lawyer's practice.

It is the opinion of the Committee that the name "Jones Smith Group" is a

trade name since the name would be understood by the public as a name adopted to designate the business conducted by the lawyers advertising their services under this name. In *Commission for Lawyer Discipline v. C.R.*, 54 S.W.3d 506 (Tex. App. — Fort Worth 2001, pet. denied), the court recognized that "[a] trade name is a designation that is adopted and used by a person either to designate a good he markets, a service he renders, or a business he conducts." 54 S.W.3d at 515. The fact that "Jones Smith Group" is a trade name would not be affected by statements in advertisements that the Jones Smith Group is not a law firm or partnership and that it is composed of multiple specifically identified law firms. Consequently, lawyers using the name "Jones Smith Group" in cooperative advertisements would be advertising under a trade name that is not a firm name permitted under Rule 7.01(a). Although it would be a factual question whether the use of "Jones Smith Group" is misleading in violation of Rule 7.01(a)'s prohibition on practicing under a misleading name, the name would unquestionably be a trade name prohibited by Rule 7.01(a). Consequently, use of this trade name in advertising would be prohibited by Rule 7.01(e) and its use in cooperative advertising would be prohibited by Rule 7.04(o)(5).

Conclusion

It is not permissible under the Texas Disciplinary Rules of Professional Conduct for three law firms with different names to advertise cooperatively using the name of one of the three law firms followed by the word "Group." ❖

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."