

**LOS ANGELES COUNTY BAR ASSOCIATION  
PROFESSIONAL RESPONSIBILITY AND ETHICS COMMITTEE**

OPINION NO. 530  
May 23, 2018

**LAW FIRM USING FORMER PARTNER'S  
OR SHAREHOLDER'S NAME**

**SUMMARY**

It is not misleading to the public, and therefore is not a violation of the Rules of Professional Conduct, Rule 1-400, for a law corporation or limited liability partnership to use a firm name that includes the name of a lawyer who is no longer a shareholder or partner, but who remains employed at the firm.

**AUTHORITIES CITED**

**STATUTES**

Business and Professions Code §§ 6150-6159.2  
Business and Professions Code §§ 6160-6172  
Corporations Code § 16306

**CALIFORNIA RULES OF PROFESSIONAL CONDUCT**

Rule 1-400  
Rule 1-400, Standard (7)

**CASES**

*Bates v. State Bar of Arizona* (1977) 433 U.S. 350  
*Jacoby v. State Bar* (1977) 19 Cal.3d 359  
*Shapero v. Kentucky Bar Assn.* (1988) 486 U.S. 466  
*T & R Foods, Inc. v. Rose* (1996) 47 Cal.App.4th Supp. 1  
*Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*  
(1985) 471 U.S. 626

**ETHICS OPINIONS**

Cal. State Bar Form. Op. 1986–90  
Cal. State Bar Form. Op. 1987–91  
Los Angeles County Bar Assn. Form. Op. 421 (1983)

## **OTHER**

Rules of the State Bar, Title 3, Div. 2, Chap. 3. Law Corporations, Rule 3.152

Rules of the State Bar, Title 3, Div. 2, Chap. 3. Law Corporations, Rule 3.154

## **STATEMENT OF FACTS**

This opinion involves the two following similar factual scenarios:

1. A law corporation named "A, B & C, Inc." consists of shareholders A, B and C. C sells her shares back to the corporation. C is employed as an attorney by A, B & C, Inc.
2. A limited liability law partnership named "A, B & C, LLP" consists of partners A, B and C. C is no longer a partner in the limited liability partnership. C is employed as an attorney by A, B & C, LLP.

## **ISSUE PRESENTED**

Does a law firm, whether organized as a law corporation or a limited liability partnership, mislead the public and violate Rule 1-400 if the firm's name includes the name of a former shareholder or partner who remains employed by the firm?

## **DISCUSSION**

A law corporation is a corporation registered with the State Bar to practice law in California. (Bus. & Prof. Code § 6160.) A law corporation may use only that name registered with the State Bar records, or a trade name that complies with State Bar rules. Use of the registered and approved name must comply with requirements of the Rules of Professional Conduct. (See Rules of the State Bar, Title 3, Div. 2, Chap. 3. Law Corporations, Rules 3.152 and 3.154; and Bus. & Prof. Code § 6171(c)<sup>1</sup>.) A trade name must include an indication of corporate status, such as "Professional Corporation," or "Inc."

Although the State Bar Act provisions regulating advertising and solicitation, Business and Professions Code sections 6150 to 6159.2, do not specifically regulate the use of law firm names, law firm names, like

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<sup>1</sup>Subsection (c) of Business and Professions Code section 6171 requires: "That the name of the law corporation and any name or names under which it renders legal services shall be in compliance with the rules and regulations."

law firm letterhead, are “communications” regulated by the Rules of Professional Conduct. (See Rule<sup>2</sup> 1-400(A)(1).)<sup>3</sup>

### Rule 1-400

Rule 1-400 establishes that the name of a law firm and the use of the name in letterheads, business cards, Web sites and the like constitute communications that are subject to scrutiny and, in some cases, discipline. Such communications cannot contain any matter that is false or deceptive or that tends to confuse, deceive, or mislead the public. (Rule 1-400(D)(2).)

Rule 1-400(E) directs the Board of Trustees to adopt “standards as to communications” that shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged rule violations. Under Standard (7), use of a “firm name, trade name, fictitious name, or other professional designation which states or implies” that a member has a relationship to any other lawyer or a law firm as a partner or associate, or officer or shareholder member pursuant to Business and Professions Code sections 6160-6172, is *presumed* to violate Rule 1-400, “unless such relationship in fact exists.”

The inquirer has raised a specific question: does a law corporation or limited liability partnership (“LLP”), by using in its name the name of a former shareholder or partner, mislead the public under Rule 1-400 if the former shareholder or partner continues to work with the firm? Because the former shareholder or partner remains with the firm, Standard (7) is inapplicable. The reason is that it does not apply when the firm name includes the name of a firm’s associate. The facts therefore must be considered in light of Rule 1-400(D)’s black-letter provisions.

Rule 1-400(D) proscribes six specific types of communications, only three of which are relevant here: untrue statements ((D)(1)); matter that is false, deceptive, or tending to confuse, deceive, or mislead the public ((D)(2)); or omissions of “any fact necessary to make the statements ... not misleading to the public” ((D)(3)). Cal. State Bar Form. Op. 1986–90 considered the situation of three separate sole practitioners holding themselves out to be a single

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<sup>2</sup>“Rules” refer to the California Rules of Professional Conduct unless otherwise stated.

<sup>3</sup>Rule 1-400 governs communications, advertising and solicitation by or on behalf of lawyers.

entity. That was determined to be a violation of former Rule 2-101<sup>4</sup> unless there was specific disclosure as to the actual status of each practitioner. Under those circumstances, the name was found to be deceptive, in that each attorney's name could suggest that all shared in the rights and obligations arising from the client's employment of just one of them.

In Los Angeles County Bar Association ("LACBA") Form. Op. 421 (1983), we considered a related question of whether a law firm partnership may include within the firm name on its letterhead the name of a lawyer who was listed as being "of counsel" but who had never been a partner in the firm. That opinion concerned a general partnership, not an LLP. Our inquiry addresses an LLP and not a general partnership.<sup>5</sup> We concluded then, in the case of a firm holding itself out as a general partnership, that such conduct *would* violate former Rule 2-101(A)(2) in that the letterhead would suggest a partnership relationship that never would have existed among all the named lawyers. Where the law firm is a general partnership, all partners have liability for the obligations of the firm based on their status as general partners; however, where the law firm is a limited liability entity, such as is stated in our Statement of Facts, partners have no such liability. As a result, LACBA Form. Op. 421 (1983) is distinguishable from the situation in this opinion.

Neither the California State Bar opinion nor the LACBA opinion applies to the scenarios under discussion, where a law corporation or an LLP uses a name that includes a former shareholder's or partner's name. (See *T & R Foods, Inc. v. Rose* (1996) 47 Cal.App.4th Supp. 1, 9-10 (law corporations).) Because of the absence of status liability, in neither case would the name of the firm be materially misleading as to the identity of those liable to firm creditors. Consequently, there is little chance that members of the public could be misled by including a former shareholder's or partner's name in the name of a law corporation or an LLP.

A communication in the form of a firm name will be determined to be false or misleading if the name is deceptive with respect to the identity of the members who are performing legal services. "[T]he firm name 'A&B' without any further explanation reasonably implies that both 'A'

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<sup>4</sup>Subsections (A)(1), (A)(2) and (A)(3) of former Rule 2-101 are substantially similar to subsections (D)(1), (D)(2) and (D)(3) of current Rule 1-400.

<sup>5</sup>Prior to the advent of LLPs, many law firms were organized as general partnerships, where the partners did have vicarious liability for the firm's obligations. Older authorities dealt with general partnerships, before LLPs became preferred entities.

and 'B' are still actively in practice together." (Cal. State Bar Form. Op. 1986–90: policy supporting former Rule 2-101 (see current Rule 1-400) ensures communications concerning attorney services be clear to the public; see also Cal. State Bar Form. Op. 1987–91: lawyers who represent insureds in separate division of insurance company may not identify themselves as a law firm without clearly indicating their relationship with the insurance company.) Where, as here, there are no facts supporting a finding of deceptive use of the firm names, there is no violation of Rule 1-400.

The use of a Bar member's name in the firm name implies only that either the member provides services at the firm, or the member previously provided services and has retired from the practice of law or is deceased.<sup>6</sup> Law firms have historically retained the names of deceased or retired partners or shareholders in their firm names. (See Cal. State Bar Form. Op. 1986–90; *Jacoby v. State Bar* (1977) 19 Cal.3d 359, 366, acknowledging the "widespread custom of retaining in the title of a law firm the name of partners long since deceased.") This practice was tacitly acknowledged by our State Supreme Court as being no more deceptive than use of the words "law office" or "legal clinic." (*Jacoby, supra*, at p. 366.)

Consequently, it is no more deceptive to use in the law corporation name the name of a former shareholder who is still employed by the firm, as to use the name of a deceased member of the firm. Rule 1-400 may not be applied so as to infringe on the expanded rights of entities to advertise under the First Amendment.<sup>7</sup>

The preceding discussion regarding law corporations applies equally to LLPs. As with a law corporation, an LLP partner has no liability to firm creditors due to partnership status. (Corp. Code §16306(c).)

We do not address in this opinion the question of whether it would violate Rule 1-400 for a law firm's name to include the name of someone who practices law elsewhere. However, we note a law corporation cannot use in its name the name of a lawyer who is disbarred or has been suspended from the practice of law, or who

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<sup>6</sup>Because the use of an attorney's name in the firm name only implies that the attorney provides or provided services at the firm, the fact that the attorney happened to also have been a shareholder or partner at the firm is not relevant to our opinion.

<sup>7</sup> See *Bates v. State Bar of Arizona* (1977) 433 U.S. 350; *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio* (1985) 471 U.S. 626; and *Shapero v. Kentucky Bar Assn.* (1988) 486 U.S. 466.

resigns with charges pending. (See Rules of the State Bar, Title 3, Div. 2, Chap. 3. Law Corporations, Rule 3.154(D)(1) and (2).)

### **CONCLUSION**

It is not misleading for a law firm, whether organized as a law corporation or a limited liability partnership, to use a name that includes the name of a former shareholder or partner who is still employed by the firm, and this would not violate Rule 1-400(D).

**This opinion is advisory only.** The Committee acts on specific questions submitted *ex parte* and its opinion is based on such facts as are set forth in the questions submitted.