

**THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 663**

September 2016

QUESTION PRESENTED

Under the Texas Disciplinary Rules of Professional Conduct, may Texas lawyers in a law firm that is a member of an organization that includes other law firms use the name of that organization as the law firm's name on pleadings or other public communications if all names contained in the organization's name are not names of current or former members of the firm or a predecessor firm?

STATEMENT OF FACTS

A law firm that operates in the State of Texas was previously known as Smith, Johnson (the "Texas law firm"). That firm has joined an international verein, which is an organization that includes two or more separate law firms. The verein is not a single law firm within the meaning of the Texas Disciplinary Rules of Professional Conduct. Law firms in other countries have also joined the verein. The name of the verein is Brown, Jones, Smith. The Texas law firm, and the other law firms in the verein, have changed their names to Brown, Jones, Smith. The verein provides some administrative services to each of the member firms and coordinates certain activities of the firms, but it does not provide legal services to clients. The lawyers who are members of the Texas law firm and who are licensed in Texas are not partners or members of the other law firms in the verein. The lawyers in the Texas law firm do not share profits, losses, or liabilities with the lawyers in the other law firms in the verein. The lawyers in the Texas law firm have no authority or vote in the actions of the other law firms in the verein. The law firms who joined the verein are not merged as a result of joining the verein. Lawyers in the Texas law firm previously known as Smith, Johnson, have begun using the verein's name, Brown, Jones, Smith, rather than Smith, Johnson, as the name of their law firm in communications with the public and on pleadings. There has never been a lawyer in the Texas law firm or any predecessor of that firm named Brown or Jones.

DISCUSSION

This opinion is based on the Committee's assumption that the lawyers in the law firms that become members of an organization that includes other law firms (in this instance a verein) are not legally determined to be members of one law firm as defined in the Terminology section of the Texas Disciplinary Rules of Professional Conduct. Rather, the law firms maintain their separate independent existence as distinct law firms, and the lawyers continue to be members of those firms. This opinion would not be

applicable if, instead, the lawyers in the law firms in the organization are legally determined to be members of a single law firm as defined in the Texas Disciplinary Rules, and there were lawyers named Brown and Jones in that firm. In addition, this opinion addresses only the issue of the name used by a law firm that joins an organization, such as a verein, which includes other law firms. The opinion does not address other ethical issues that may arise from a law firm joining such an organization.

A number of the Texas Disciplinary Rules are relevant to a determination of whether Texas lawyers can practice law using the name of the verein rather than the name of the Texas law firm. Rule 7.01(a) of the Texas Disciplinary Rules of Professional Conduct governs the use of law firm names and provides, in relevant part:

“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.”

Rule 7.01(d) provides: “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.”

Comment 1 to Rule 7.01 explains:

“A lawyer or law firm may not practice law using a name that is misleading as to the identity of the lawyers practicing under such name, but the continued use of the name of a deceased or retired member of the firm or of a predecessor firm is not considered to be misleading. Trade names are generally considered inherently misleading. Other types of firm names can be misleading as well, such as a firm name that creates the appearance that lawyers are partners or employees of a single law firm when in fact they are merely associated for the purpose of sharing expenses. In such cases, the lawyers involved may not denominate themselves in any manner suggesting such an ongoing professional relationship as, for example, “Smith and Jones” or “Smith and Jones Associates” or “Smith and Associates.” Such titles create the false impression that the lawyers named have assumed a joint professional responsibility for clients’ legal affairs. See paragraph (d).”

Rule 7.01(e) prohibits a lawyer from advertising in the public media or seeking professional employment “by any communication under a trade or fictitious name,” except for a firm name that is permitted under Rule 7.01(a) and only if that name appears in the lawyer’s letterhead, business cards, office sign, and other aspects of the lawyer’s practice.

In addition, Rule 7.02 governs communications concerning a lawyer's services, and Rule 7.02(a) provides, in relevant part: "A lawyer shall not make or sponsor a false or misleading communication about the qualifications or the services of any lawyer or firm." These requirements of Rule 7.02(a) are incorporated into the prohibitions of Rule 7.01 by Rule 7.01(f), which provides: "A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.02(a)."

In addition to the Texas Disciplinary Rules, two Professional Ethics Committee opinions are relevant to determining whether lawyers in the Texas law firm may use the *verein's* name. In Professional Ethics Committee Opinion 605 (March 2011), a lawyer left a firm to open his own practice but authorized his former firm to continue to use his name in his former firm's name. Because the lawyer who left the firm did not "retire" from the practice of law, he was not a "retired" member of the firm for purposes of the exception stated in Rule 7.01(a) for "retired members of the firm." Thus, the Committee concluded that continuing to use the departing lawyer's name in the firm name would violate Rule 7.01(a) and (d) and Rule 7.02(a).

Similarly, in Opinion 591 (January 2010), three law firms with different names proposed to advertise cooperatively using the name of one of the law firms followed by the word "Group." Each advertisement would state that the firms are independent law firms and not a law firm or partnership. The Committee concluded that the proposed name was a trade name whose use would violate Rule 7.01(a), whose use in advertising would violate Rule 7.01(e), and whose use in cooperative advertising would violate Rule 7.04(o)(5), which prohibits lawyers from advertising as part of an advertising cooperative or venture of two or more lawyers not in the same firm unless each such advertisement does not otherwise violate the Texas Disciplinary Rules of Professional Conduct.

It is the opinion of the Committee that the use of the *verein* name Brown, Jones, Smith by Texas lawyers in the Texas law firm under the facts presented violates Rule 7.01(a), which prohibits lawyers from practicing under "a firm name containing names other than those of one or more of the lawyers in the firm" or "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," because there has never been a lawyer in the Texas law firm or any predecessor firm named Brown or Jones. In addition, the use of Brown, Jones, Smith under these facts is misleading as to the identity of the lawyers in the Texas law firm and creates the appearance that all lawyers in all the law firms that are in the *verein* are members of a single law firm when in fact they are not. The fact that Brown, Jones, Smith is misleading as to the identity of the lawyers in the Texas law firm is not affected by statements in advertisements and disclaimers that Brown, Jones, Smith is not a single law firm or partnership. *See* Opinion 591. Thus, use of the *verein* name Brown, Jones, Smith, as the name of the Texas law firm, when there has never been a lawyer in the Texas law firm or any predecessor firm named Brown or Jones, violates Rule 7.01(a) and (d). Consequently, use of this name in advertising by the Texas law firm also violates

Rule 7.01(e), and the use of this name in cooperative advertising by the Texas law firm would violate Rule 7.04(o)(5).

CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct, Texas lawyers in a law firm in Texas that is a member of an organization that includes other law firms, may not use the name of the organization as their law firm's name on pleadings or other public communications if all names contained in the name of the organization are not names of current or former lawyers of the their law firm or a predecessor firm as permitted by Rule 7.01(a).