New York State Bar Association
Committee on Professional Ethics

Opinion 1233 (12/07/2021)

Topic: Law firm associates and the phrase "and Associates" in law firm name

Digest: A sole practitioner may not refer to associates of other law firms with whom she works as "associates" of her firm and may not include in her law firm name the phrase "and Associates" when she is referring to associates employed by another firm.

Rule: 7.5(b)

FACTS:

1.   Inquirer is a sole practitioner who works with other law firms on all of her matters. Inquirer's law firm does not employ any lawyers.

QUESTIONS:

2.   May the inquirer refer to the lawyers in the firms with which she works as "associates" of the inquirer's law firm? With reference to those lawyers, may the inquirer include in her firm name the phrase "and Associates"?

OPINION:

3.   Rule 7.5(b)(1)(iii) provides:

> A lawyer in private practice shall not practice under . . . a name that is misleading as to the identity of the lawyers practicing under such name.

4.   Comment [5] to Rule 7.5 provides:

> Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a 'firm' . . . because to do so would be false and misleading. . . . It is also misleading for lawyers to hold themselves out as being counsel, associates, or other affiliates of a law firm if that is not a fact, or to hold themselves out as partners, counsel, or associates if they only share offices. Likewise, law firms may not claim to be affiliated with other law firms if that is not a fact.

5.   The term "associate" has a recognized meaning in the legal profession. It refers to a lawyer who is a paid employee of a law firm, not a partner or shareholder in that firm. See N.Y. State 1137 ¶ 9 (2017) ("The term 'associate' often conveys the status of a junior lawyer who is not a partner or principal but is regularly employed by the firm.") See also N.Y. City 1996-8 (the 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").

6.   Accordingly, a lawyer may not refer to other lawyers as "associates," unless those lawyers are actually paid employees of the lawyer's law firm.   It is not sufficient that the inquiring lawyer works with those lawyers and their law firms on a frequent or even exclusive basis.

7.   By parity of reasoning, the inquiring lawyer may not include in her firm name the phrase "and Associates" in reliance upon the fact that she works on all her matters with other law firms that do employ associates. Using the phrase "and Associates" when she has no associates would be false, deceptive, and misleading in at least two respects. First, it would falsely imply that inquirer's firm is larger than it actually is and possesses greater professional resources to devote to a client's service. Second, it would falsely imply that inquirer, as an employer of associates, had the capacity to control and give direction to junior attorneys when, in fact, the power to supervise or control the activities of those junior attorneys is vested in their supervisors at the other firms that employ them.

8.   Even though the inquirer may not use a law firm name implying that she has "associates" in the traditional sense of employed junior lawyers, her firm might have a sufficiently close relationship with lawyers at other firms to describe them in her marketing materials as "associated" or "affiliated" with her firm. However, whether she may do so without running afoul of the prohibition on "false, deceptive, or misleading" advertising, see Rule 7.1(a), or violating the prohibition against conduct involving "deceit" or "misrepresentation," see Rule 8.4(c), is a fact-based inquiry, and we lack sufficient context to make that determination.

CONCLUSION:

9.   A sole practitioner may not refer to associates employed by other law firms with whom she works as "associates" of her firm and may not include in her law firm name the phrase "and Associates" when she is referring solely to associates employed by another firm.

(30-21)