ISBA Advisory Opinions on Professional Conduct are prepared as an educational service
to members of the ISBA. While the Opinions express the ISBA interpretation of the Illinois
Rules of Professional Conduct and other relevant materials in response to a specific
hypothesized fact situation, they do not have the weight of law and should not be relied
upon as a substitute for individual legal advice.

This Opinion was AFFIRMED by the Board of Governors in January 2010. Please see the
2010 Illinois Rules of Professional Conduct 7.1, and 7.5 and Comment [2]. This opinion
was affirmed based on its general consistency with the 2010 Rules, although the specific
standards referenced in it may be different from the 2010 Rules. Readers are encouraged
to review and consider other applicable Rules and Comments, as well as any applicable
case law or disciplinary decisions.

Opinion No. 03-02
January 2004

Topic: Firm Name, Professional Corporations, Partnerships

Digest: A law firm’s name may not imply partnership where no actual partnership
arrangement exists. A law firm’s name may not mislead the public. A law firm’s
name may not contain the name of a partner who withdraws from the firm to join
another law firm. A law firm’s name may contain the name of a retired partner or
one who has an “of counsel” relationship to the firm, provided the firm takes
reasonable steps to show that partner’s status.

Ref.: Illinois Rules of Professional Conduct, Rules 7.1, 7.5

Supreme Court Rule 721, 722

ISBA Advisory Opinion Nos. 373, 709, 865

ABA Formal Opinion No. 318

Ethical Consideration 211 (EC-211)

FACTS

Scenario 1

Lawyer Smith has practiced law for many years with lawyers Jones and Doe under the name of Smith, Jones & Doe, P.C. Smith is the only shareholder. Neither Jones nor Doe is a shareholder in the firm: they do not share in profits or expenses of the firm. Smith assumed that incorporation took his firm out of the ethical requirement relating to holding oneself out as a partnership.

Scenario 2

For many years, Smith has practiced law with his partners, Jones and Doe, under the name of Smith, Jones & Doe. Jones decides to withdraw from the partnership to join another law firm. May the firm continue to be titled Smith, Jones & Doe? May the firm continue to be titled Smith, Jones & Doe if Jones withdraws from the partnership to retire from the practice of law? May the firm continue to be titled Smith, Jones & Doe if Jones no longer wishes to be a partner, but rather, wants to have an “of counsel” relationship with the firm?

QUESTIONS

Scenario 1: Does the name of the firm violate the Rules of Professional Conduct on lawyer advertising?

Scenario 2: May the firm still continue to use the name, Smith, Jones & Doe under any of the scenarios presented?

OPINION

The principal rule governing law firm names is Rule 7.5 of the Illinois Rules of Professional Conduct, Firm Names and Letterheads. Rule 7.5(d) provides in pertinent part:

(d) Lawyers may state or imply that they practice in partnership or other organization only when that is the fact.

Rule 7.1, Communications Concerning a Lawyer’s Services, is also relevant to firm names. Rule 7.1 provides in pertinent part:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it:
(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Scenario 1

The law firm name Smith, Jones & Doe, P.C. suggests that Smith, Jones and Doe practice in a professional corporation and that each of three is in some manner a shareholder, principal and/or equity holder therein, yet the facts presented in Scenario 1 indicate that this is not true.

Unless the exceptions set forth in Supreme Court Rule 722 are satisfied, Supreme Court Rule 721, Professional Service Corporations, Professional Associations, Limited Liability Companies, and Registered Limited Liability Partnerships for the Practice of Law, states that all attorneys who are shareholders in a professional corporation are jointly and severally liable for the acts, errors, and omissions of the shareholders, members and other employees of the professional corporation arising out the performance of professional services while they are shareholders. Thus, use of the law firm name Smith, Jones & Doe, P.C. when Jones and Doe are not shareholders, principals or other equity holders therein is misleading to the public. A client who hires Smith, Jones & Doe, P.C. could be under the misunderstanding that Jones and Doe may be held jointly and severally liable for professional malpractice committed by the firm, or that the firm is in compliance with Supreme Court Rule 722, when that is not in fact the case.

Accordingly, in order to comply with Rules 7.1 and 7.5(d), either the names Jones and Doe must be removed from the law firm name or they must be made shareholders or given an equity interest in the professional corporation.

Scenario 2

It would violate Rules 7.1 and 7.5(d) for the firm to continue using the name “Smith, Jones & Doe,” if Jones withdraws from the partnership to join another law firm. In ISBA Opinion No. 865, the committee cited Ethical Consideration (EC-211), which opines “the name of a partner who withdraws from a firm but continues to practice law should be omitted from the firm name in order to avoid misleading the public.”

If, however, Jones decides to withdraw from the partnership in order to retire from the practice of law, it is permissible for the law firm to continue using the name, “Smith, Jones & Doe.” In ISBA Opinion No. 709, the committee opined that a law firm name may contain the name of a retired member of the firm if: (a) the firm is a bona fide successor of one in which the retired partner was a member; (b) using the name is authorized by law or contract; and (c) the public is not misled. The firm using the name of a retired lawyer should take reasonable steps to show that he or she is retired, such as by indicating on the firm stationery the years during which he or she practiced. Id. See also ABA Form Op. 318 (“The continued use of the name of a deceased or former partner, when permissible by local custom, is not unethical, but care should be taken that no imposition or deception is practiced through this use.”); Deane Beth Brown, “From Office Sharing to Letterhead: The Ethics of Holding Yourself Out to the Public,” 89 Illinois Bar Journal 369, 371-72 (July 2001).
Finally, to the extent Jones wishes to have an “of counsel” relationship with the firm, it is permissible for the firm to continue using the name “Smith, Jones & Doe” provided that the firm takes appropriate measures to avoid misleading the public, such as by indicating Jones’ status as “of counsel” on the firm stationery. In ISBA Opinion No. 373, the Committee observed:

The term “of counsel” shown on a firm’s letterhead or shingle is customarily used to indicate a former partner who is on a retirement or semi-retirement basis, or one who has retired from another partnership, from general private practice or from some public position and who remains or becomes available to the firm for consultation and advice, either generally or in a particular field.