



ISBA Professional Conduct Advisory Opinion

Opinion 22 – 04

October 2022

Subject: Law Firm Name; “Of Counsel” Designation

Digest: After restructuring as a professional limited liability company, a law firm may continue to use the names of its deceased or retired partners in its name provided that there has been a continuing succession in the firm’s identity. To be “of counsel” to a firm one must have a continuing and regular relationship with the firm.

References: Illinois Rules of Professional Conduct 7.1 and 7.5
Illinois Supreme Court Rules 721 and 722
ISBA Advisory Opinion Nos. 776, 817, 840, 865, 03-02, 16-04, 20-04
ABA Formal Opinion 90-357 (1990)

FACTS

The law firm of “Smith Jones & Brown” (“Firm”) has operated as a partnership for several decades. Over the years, the Firm has had multiple partners who have had the last name of “Smith” or “Jones,” who have since retired and are now deceased. The remaining partners of the Firm are John and Jane Brown. They have been partners for several years and have continued to operate as a partnership under the existing firm name. The Firm would like to restructure as a PLLC – professional limited liability company – and would like to continue to use the Smith Jones & Brown name, operating as Smith Jones & Brown, PLLC. John Jones Jr. is still living but has cut back his practice and continues to work in an “of counsel” capacity for the firm. Julie Brown would like to join the Firm as a member of the PLLC and Jane Brown would like to become “of counsel” to the Firm.

QUESTIONS

- 1) After restructure, is it permissible for the Firm to use the name “Smith Jones & Brown PLLC” even though there are no longer any partners in or owners of the Firm with the last names of Smith or Jones?

- 2) Is it permissible for Julie Brown to become a member of the PLLC, with John and Jane Brown?
- 3) Is it permissible for Julie Brown and John Brown to be the only members of Smith Jones & Brown, PLLC and for Jane Brown to be of counsel?
- 4) Can John Jones Jr. continue to be of counsel?

OPINION

Question 1. The short answer to Question 1 is “Yes”: the Firm may continue to use the name “Smith Jones & Brown” after its restructure as professional limited liability company (with the added designation “PLLC”). Rules 7.5 and 7.1 of the Illinois Rules of Professional Conduct govern the use of law firm names. Rule 7.5 provides, in relevant part, as follows:

- (a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

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

Rule 7.1, in turn, provides as follows:

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 contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading.

At first glance, both Rules would appear to prohibit using the names of deceased or retired partners in the firm name because they are no longer practicing law. Comment 1 to Rule 7.5, however, expressly states that a firm name may contain the names of deceased partners “where there has been a continuing succession in the firm’s identity” “[A]ny firm name including the names of deceased partners is, strictly speaking, a trade name.” *Id.*

A firm name may also include the name of a retired partner provided that: (1) “the firm takes reasonable steps to accurately reflect the retired partner’s status,” (2) the firm is a *bona fide* successor to the firm in which the retired partner was a member, (3) the use of the partner’s name is otherwise authorized by contract or law, and (4) the public is not misled. ISBA Op. No. 20-04. *See also* ISBA Op. No. 03-02; ISBA Op. No. 865.

Although the Firm plans to restructure as a professional limited liability company, there has been “a continuing succession” in the Firm’s identity. The Firm has been known as “Smith Jones & Brown” for several decades. Thus, provided that “Smith” and “Jones” who were named partners in the Firm are now deceased or have retired from the Firm and are no longer practicing law, the Firm may use the name “Smith Jones & Brown PLLC” after its restructure. The Firm should indicate on its website that Smith and Jones are either retired or deceased in order to avoid misleading the public.

Questions 2 and 3. The answers to Questions 2 and 3 are also “Yes.” Provided the Firm makes clear on its website or other marketing material that Smith and Jones are retired or deceased and that Jane Brown is now “of counsel” to the Firm, Julie and John Brown may be the sole members of the Firm. This assumes that both Julie Brown and John Brown satisfy the requirements of practicing law as a professional limited liability company under Illinois Supreme Court Rules 721 and 722, which is beyond the scope of this Opinion.

Question 4. As discussed in several ISBA opinions, an “of counsel” relationship “is a professional designation used by a lawyer to denote a continuing relationship with a lawyer or law firm other than as a partner or associate.” ISBA Op. No. 20-04; *see also* ISBA Op. No. 16-04. “The ‘Of Counsel’ relationship has as its core characteristic a close, regular and permanent relationship that is more than a mere forwarder of legal business, more than an occasional consultant relationship, and more than a relationship for the purposes of one case.” ISBA Op. No. 20-04; *see also* ISBA Opinion Nos. 776, 817, and 840; ABA Formal Opinion 90-357 (1990). To use the term “of counsel,” the lawyer must also be on “active” status with the Illinois bar. *See, e.g., Thinking about “retirement”? Explaining the differences between inactive vs. retired status* (available at <https://www.illinoiscourts.gov/News/1026/Thinking-about-retirement-Explaining-the-differences-between-inactive-vs-retired-status/news-detail/>). Provided that these conditions are met and provided that his status as “of counsel” is appropriately and accurately identified for the public (*e.g.*, on the Firm’s letterhead, website, and other similar materials), John Jones, Jr. may be “of counsel” to the Firm. Indeed, a firm may retain the name of a former partner who has become “of counsel” to the firm. *Id.*

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