

**THE PROFESSIONAL ETHICS COMMITTEE  
FOR THE STATE BAR OF TEXAS  
Opinion No. 634**

**July 2013**

**QUESTION PRESENTED**

Under the Texas Disciplinary Rules of Professional Conduct, is it permissible for a law firm to continue to include in the firm name the name of a lawyer who temporarily moves out of Texas and accepts a job that prohibits the lawyer from engaging in the private practice of law? Is it permissible for that lawyer to continue as a member of the Texas law firm and to maintain a financial interest in the Texas law firm?

**STATEMENT OF FACTS**

Lawyer A and Lawyer B establish a law firm (the “Law Firm”), formed as a professional limited liability company, with both names in the firm name, “A B, PLLC.” Lawyer A moves out of state and accepts a job as an assistant district attorney in another state while Lawyer A’s spouse works for a limited period in the other state. While serving as an assistant district attorney, Lawyer A is prohibited from engaging in the private practice of law. Lawyer A intends to return to Texas and resume practicing with the Law Firm at some undetermined time in the future. Lawyer A will maintain a law license in Texas at all times.

**DISCUSSION**

Rule 7.01 of the Texas Disciplinary Rules of Professional Conduct provides in pertinent part:

“(a) 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. . . .

....

(d) 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.

....

(f) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.02(a). “

Rule 7.02(a) prohibits a lawyer from making or sponsoring “a false or misleading communication about the qualifications or the services of any lawyer or firm.”

In Professional Ethics Committee Opinion 605 (March 2011), a lawyer left a firm to open his own practice. 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.” Continuing to use that lawyer’s name in the firm name was found to be in violation of paragraphs (a) and (d) of Rule 7.01.

In this situation, Lawyer A did not retire from practicing law and she did not leave the Law Firm to open her own practice in Texas. She did, however, cease to be in a position to practice law with the Law Firm when she moved to a different state and accepted a position as an assistant district attorney that prohibited her from practicing law outside her employment. The fact that the new position is expected to have limited duration and that she intends to return to Texas does not change the result. Continuing to use Lawyer A’s name in the firm name would lead the public reasonably to believe that Lawyer A is in a position that would allow her to practice law with the Law Firm. Because Lawyer A’s new employment arrangement prohibits Lawyer A from practicing law with any private law firm, the continued use of Lawyer A’s name in the Law Firm’s name would be misleading and would violate Rule 7.01(a). The result would be different if Lawyer A were to take a temporary sabbatical for other reasons that did not prevent her from providing legal services as a member of the Law Firm from time to time during the sabbatical.

Rule 7.01(d) prohibits Lawyer A from holding herself out as being a member of the Law Firm unless she is in fact a member. The provisions of chapter 301 of the Texas Business Organizations Code applicable to Texas law firms formed as professional limited liability companies and professional corporations permit a lawyer to be a member of a law firm that is a professional limited liability company or a professional corporation so long as she is a licensed lawyer in Texas. Assuming Lawyer A continues to maintain her Texas law license, she is permitted to continue as a member of the Law Firm. If Lawyer A retains a position as a member of the Law Firm, the firm should avoid any misleading communications regarding Lawyer A’s participation in the firm’s law practice during the period in which Lawyer A’s employment arrangement in the other state prohibits her from practicing law with the firm.

Lawyer A’s continued financial interest in the Law Firm does not violate any provision of the Texas Disciplinary Rules of Professional Conduct. If for any reason Lawyer A ceases to be a member of the Law Firm, any division of fees between Lawyer A and Lawyer B after Lawyer A leaves the firm would have to comply with the provisions of Rule 1.04 that set limits on the division of legal fees between lawyers who are not in the same firm.

## **CONCLUSION**

Under the Texas Disciplinary Rules of Professional Conduct, it is not permissible for a law firm to continue to include in the firm name the name of a lawyer who temporarily moves out of Texas and accepts a job that prohibits the lawyer from engaging in the private practice of law. Nothing in the Texas Disciplinary Rules of Professional Conduct prohibits the lawyer from remaining as a member of the law firm or maintaining a financial interest in the firm so long as no action is taken to mislead the public about the lawyer's lack of participation in the firm's law practice during the time the lawyer's employment outside of Texas prohibits the lawyer from practicing law with the firm.