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May 4, 2011

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Rules Comments (Re: Trade Name Rule Amendment)
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

Dear Judge Grant:

I am providing comments as an individual, and not on behalf of any organization, on the Proposed Amendment to RPC 7, only as the proposed rule would affect mediation. I am a non-attorney mediator practicing in New Jersey since 1997. I am an Accredited Professional Mediator by the New Jersey Association of Professional Mediators (NJAPM), and an Advanced Practitioner by the Association for Conflict Resolution (ACR). I am an instructor for NJAPM and ICLE's 40-hour divorce mediation classes. I served as President of NJAPM from 2005-2007. I operate as Divorce with Dignity Mediation Services with offices in Hoboken and Clinton, New Jersey, and specialize in mediating complex financial issues in divorce; I also serve on the Courts' roster of civil and divorce mediators.

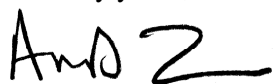
Comments are sought on a proposed rule would permit the use of a trade name by a law firms so long as the trade name describes the nature of the firm's legal practice in terms that are accurate, descriptive, and informative, but not misleading, comparative, unprofessional, or suggestive of the ability to obtain results. Such trade names should be accompanied by the name of the attorney who is responsible for the management of the organization.

First, I would want to make certain that if a law firm uses the word "mediation" in its trade name that the firm does in fact provide mediation services to the public. It would seem that if it did not then the trade name would be misleading. I am concerned that some firms might use mediation in their trade name not with the intention of actually provided mediation services but instead of getting clients into the firm for the purposes of marketing its litigation practice.

Second, I urge that if a law firm uses a trade name it should be required to use that name in all aspects of the law firm's practice, including the firm name, letterhead, business cards, office sign, fee contracts, and pleadings. This would be that a firm should not be able to use a separate trade name for a mediation department within the law firm. All services provided by the law firm should be under a single trade name so that public is not misled. This situation was addressed by the Florida Bar, and it required the use of a single name. A copy of Opinion 94-6 (April 30, 1995) is attached.

If you have any questions, please contact me.

Sincerely yours,



Anju D. Jessani, MBA, APM®
Accredited Professional Mediator

PROFESSIONAL ETHICS OF THE FLORIDA BAR

OPINION 94-6

April 30, 1995

A law firm may operate a mediation department within the firm. The mediation practice must be conducted in conformity with the Rules of Professional Conduct. Consequently, nonlawyers employed by the firm's mediation department may not have an ownership interest in the firm or its mediation department, the attorney advertising rules will apply to any advertising by the mediation department, and the mediation department may not use a proposed trade name because that trade name is not the name under which the firm practices.

RPC: 4-5.4(a), 4-5.4(b), 4-5.5(b), 4-7.7

Opinions: 86-4, 86-8, 88-15, 89-4, 90-7; Arizona 88-5, Illinois 90-32

A member of the Florida Bar requests an opinion regarding the propriety of establishing and operating a mediation department in his law firm. The inquiring attorney states that the department would use the trade name "Sunshine Mediation." The mediation department would use this trade name on its letterhead in all correspondence and billing. The letterhead would state "Sunshine Mediation, The Mediation Department of [the law firm]." The mediation department also wishes to hire nonlawyer mediators as "independent contractors" and to list the nonlawyers on the letterhead.

Florida Bar members may participate in business practices other than law. See, e.g., Florida Ethics Opinions 86-8 [withdrawn], 88-15, and 90-7 [withdrawn] for a discussion of ethical considerations that are applicable when an attorney engages in dual professions. Where, as in the inquirer's situation, the business practice is conducted through the law firm and is closely associated with the practice of law, the Committee is of the opinion that the mediation practice must be conducted in conformity with the Rules of Professional Conduct (Chapter 4, Rules Regulating The Florida Bar). See, e.g., Arizona Opinion 88-5 and Illinois Opinion 90-32.

Consequently, in the situation presented the Committee is of the opinion that any nonlawyer mediators employed by the inquirer's law firm may not have an ownership interest in either the law firm or the mediation department. To do so would implicate rules prohibiting sharing fees with nonlawyers, partnership with nonlawyers, and assisting in the unauthorized practice of law. See Rules 4-5.4(a), 4-5.4(b), and 4-5.5(b).

The Committee also is of the opinion that the lawyer advertising rules (Rules 4-7.1 through 4-7.7) will apply to any advertising done by the mediation department of the law firm. Advertising by a department within a law firm must be considered advertising by the law firm itself. Regarding letterhead, nonlawyer mediators employed by the firm may be listed on the letterhead only if their nonlawyer status is clearly indicated. Florida Ethics Opinion 86-4 and 89-4.

The Committee further concludes that, under the circumstances described, it would be improper for the law firm to use the trade name "Sunshine Mediation" for its mediation department. Rule 4-7.7 permits the use of non-misleading trade names by law firms, but only if the trade name is used in all aspects of the law firm's practice, including the firm name, letterhead, business cards, office sign, fee contracts, and pleadings. The plain language of the rule does not allow the limitation on the use of the trade name to a department within the firm.

[Revised: 06-23-2009]