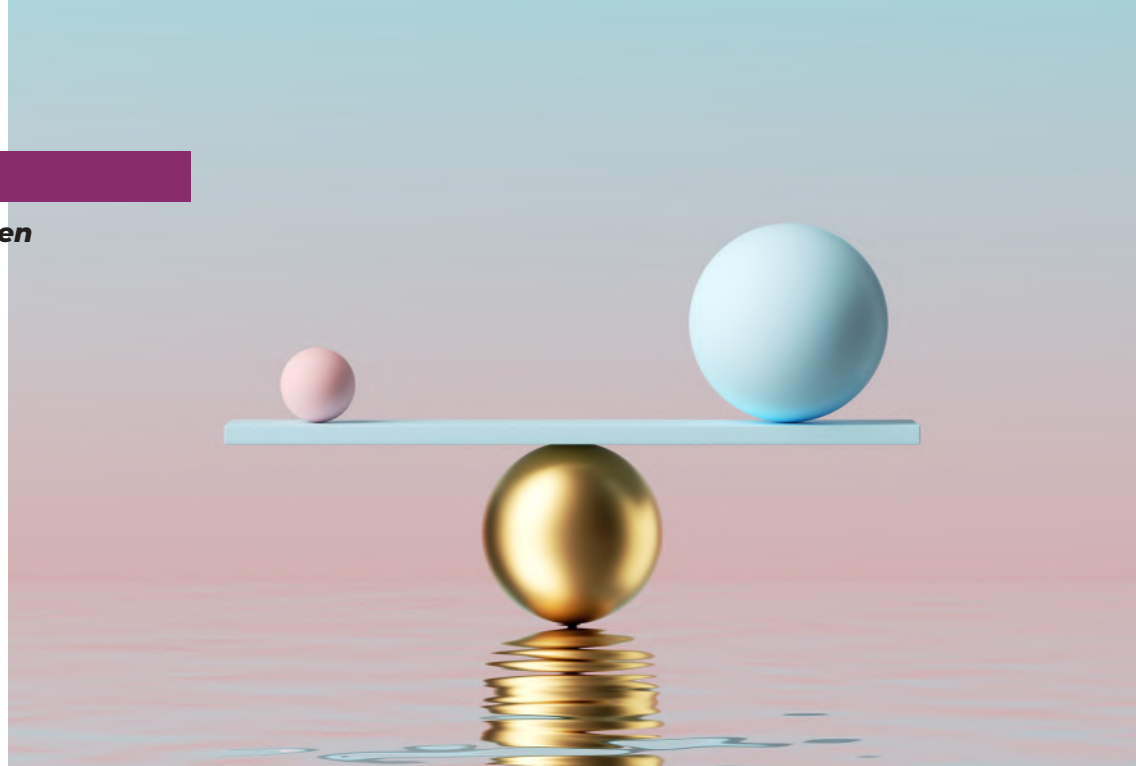


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INDIANA EXPANDS LAWYERS ABILITY TO USE TRADE NAMES

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I. 2021 Update to Rule 7.5 expands scope of permissible lawyer trade names

If you have ever dreamed of renaming your firm to distinguish your practice from your colleagues in the law, get excited. The 2021 amendment to Rule 7.5 may finally give you the chance to describe your unique attributes in your firm's name. Breaking with the tradition that Indiana lawyers may practice under strictly informational firm names, the 2021 update to Indiana Rule of Professional Conduct 7.5 expands the scope of permissible law firm names by removing most restrictions on trade names. Rule 7.5(a) now provides:

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.

Prior to 2021, Rule 7.5 limited Indiana lawyers' use of trade names to factual descriptions of the following:

- the names of lawyers actively practicing in the firm;
- deceased or retired lawyers who had practiced in the firm;
- the field of law in which the firm concentrates it work;
- the geographic location of the firm's offices; and
- the firm's language fluency.

These limitations were consistent with Indiana's status as one of the more conservative states when it comes to regulating lawyer advertising. For instance, many states permit a lawyer to advertise results and statistical outcomes, provided the data is accurate and accompanied by a disclaimer that results may not be typical. Indiana has declined to update its rules to allow lawyers to advertise results and statistics. Even with the update to Rule 7.5, lawyers must be cognizant of the restrictions imposed by Rule 7.1.

II. Trade names must not be false or misleading

Importantly, Rule 7.1 prohibits lawyers from making a "false or misleading communication about the lawyer or the lawyer's services." Comment [1] reminds that Rule 7.1

applies to "all communications" about a lawyer's services. Further guidance comes from Comment [5] to ABA Model Rule 7.1, which explains "[f]irm names, letterhead and professional designations are communications concerning a lawyer's services." Accordingly, Indiana lawyers must ensure any newly adopted trade name is not misleading. Similarly, because Rule 7.1 generally bars comparisons to other lawyers, the authors of this article advise you against offering services under names akin to "Most Successful Litigators in Indiana."

In contrast to superlatives, comparisons and other trade names that might mislead consumers by creating unjustified expectations, it appears Indiana lawyers can use trade names describing their practice style. Thus, a lawyer could practice under the name "Prudent Advisors" or "Compassion Injury Law." A lawyer might even be able to get

away with something nonsensical in a name such as "Lawyers Who Like Llamas" although it is not at all clear it would be a commercially viable option. It also appears the door is open for lawyers to coin new words that convey a sense of the lawyer's values or practice style. Without mentioning any famous trade names in this article, one can imagine certain brands names for camera film, tissues, and copy machines that started out as made-up words. With a clever marketing team, Indiana lawyers now can create a wholly unique brand.

III. Applying Rule 7.5 and 7.1 to lawyer communications

While there are no Indiana disciplinary cases discussing the new 7.5(a), there are a few cases that demonstrate what the Indiana Supreme Court has considered to be a false or misleading trade name. In *In re Miller*, 462 N.E.2d 76, 78

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(Ind. 1984), the respondent posted road signs in Marion County using the trade name “Area Attorneys.” Without much explanation, the court’s order concluded the respondent’s signs were “misleading as to the identity of the respondent practicing under said trade name,” presumably because the respondent was a sole practitioner, not a plural group of “attorneys.” *Id.*

Similarly, the respondent in *In re Schneider*, 710 N.E.2d 178 (Ind. 1999), operated a solo law and accounting practice with no employees and used a single letterhead. The letterhead listed the name of the practice as “Professional Services Group” and listed names of attorneys and CPAs who were not actually associated with the respondent’s practice. The Indiana Supreme Court found this practice was “deceptive and misleading” and explained it “would understandably create confusion regarding the identity and responsibility of those practicing law or performing services in support of the law practice. It leaves the impression that those listed are associated with the law practice, when in fact they are not.” *Id.* at 180.

At the time of the *Schneider* decision in 1999, the Indiana Rules of Professional Conduct prohibited trade names under any circumstances because of the belief they were “inherently misleading.” *Id.* at 179. Nonetheless, this name would likely be considered misleading today if used by a sole practitioner with no employees. As the Indiana Supreme Court explained, “[t]here was no ‘group’,” thus “[r]eferring to his practice as part of a group created a false impression that the other attorneys were associated with respondent in

the practice of law.” *Id.* at 180. It is helpful to understand how other states are governing the use of trade names. South Carolina’s Rule 7.5(a) is identical to Indiana’s new Rule 7.5(a). In Ethics Advisory Opinion 03-04, the South Carolina Bar Association attempted to help attorneys navigate this rule. In that ethics opinion, the bar considered whether attorneys may “engage in the practice of law under the firm name, ‘Capitol Counsel, L.L.C.’” The bar’s conclusion was this trade name does not violate the South Carolina Rules of Professional Conduct.

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Although trade names that imply “a connection with a government agency or with a public or charitable legal services organization” are problematic “both in their confusion for the client and the potential unfair advantage for the law firm in question,” the South Carolina Bar opined “Capitol Counsel, LLC” does not violate Rule 7.5 because in South Carolina:

No state agencies include the word “capitol” in their nomenclature. Without conducting an exhaustive review of all of this state’s “public legal aid agenc[ies],” it seems unlikely that any such agency in South Carolina employs the word “Capitol” in its name. Inclusion of the corporate designation “L.L.C.” further clarifies that the entity is a private corporation, not a public entity.

Florida State Bar Ethics Opinion 93-7 provides a contrasting example of what could be considered a misleading trade name:

Use of a trade name such as “Entertainment Law Center” . . . could be misleading . . . if it falsely suggests to the public that members of the trade name firm limit their practice to entertainment law. Prospective clients could then reasonably infer that the trade name firm’s members possess special skills and qualifications in the area of entertainment law that may not be possessed by attorneys who have chosen not to limit their practice to one area of the law, or that clients will be dealing with a firm whose members concentrate their efforts totally in one area of the law, when in reality those attorneys handle not only entertainment law matters but other types of cases as well.

The concern of the Florida bar appears to be that legal consumers would be duped into thinking a lawyer is not focused exclusively on one area of law. There does not appear to be any concern with a trade name that accurately describes a focused law practice, especially in Indiana where Comment [2] to Rule 7.2 explicitly permits lawyers to advertise the fields in which they practice.

As with most ethical guidelines, Rule 7.5 is a rule of reason and should be interpreted with the goal of consumer protection in mind. For instance, comment [5] to ABA Model Rule 7.1 provides guidance that a firm name that *could* imply an association with a legal aid organization or a government agency might require “an express statement” disclaiming such association to avoid a misleading

implication. Likewise, legal ethics commentators opine that disclaimers should be used to remedy any confusion that might arise from geographical trade names. Trade names may be valuable marketing tools if they are either informative or creative and memorable. Lawyers who carefully assess the potential interpretations of a trade name will enjoy the benefits of the new Rule 7.5. ^{RG}

Footnotes

1. See, e.g., *Illinois Rule of Professional Conduct 7.1, Comment [4]* (“The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.”); *Pennsylvania Rule of Professional Conduct 7.1, Comment [4]* (same). Cf. *Indiana Rule of Professional Conduct 7.1, Comment 2* (“a communication will violate Rule 7.1 if it contains statistical data or other information based on past performance or an express or implied prediction of future success.”).
2. See *Rule 7.1, Comment [2](5)* (barring communications that “compare[] the services provided by the lawyer . . . with other lawyers’ services, unless the comparison can be factually substantiated.”).
3. <https://www.scbarr.org/lawyers/legal-resources-info/ethics-advisory-opinions/eao/ethics-advisory-opinion-03-04/>
4. <https://www.floridabar.org/etopinions/etopinion-93-7/#:~:text=The%20inquiring%20attorney%20requests%20an,Opinions%2083%2D1499%20and%201253>
5. See, e.g., Geoffrey C. Hazard, Jr., W. William Hodes & Peter R. Jarvis, *The Law of Lawyering* §59.12.2 (4th Edition, 2020-2 Supp. 2014) (suggesting a disclaimer or increased specificity in a trade name to avoid confusion).

PRACTICAL TAKEAWAYS

- Choose a trade name that is honest and not misleading
- Choose a trade name that does not violate Rule 7.1 by listing statistics, past results, or other impermissible content
- Choose a trade name that does not contain a superlative or other unverifiable ranking
- Test your proposed trade name with other lawyers and non-lawyer consumers to ensure that they do not find it misleading
- Consider a disclaimer if you are concerned about ambiguity

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