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COMMITTEE ON ATTORNEY ADVERTISING
APPOINTED BY THE NEW JERSEY SUPREME COURT

OPINION 32

LAWYERS' AND LAW FIRMS' SELECTION AND ADVERTISING OF INTERNET DOMAIN NAMES

An Inquirer has asked the Committee what considerations would govern the selection and use of a particular name as its Uniform Resource Locator ("URL") for specifying its address on the Internet.

The selection of an Internet domain name for a law firm and the use of that identifier in advertisements for the services of the firm raises two questions: first, must the lawyer in selecting a domain name follow the rule of professional conduct governing firm names, and second, may the selected name be used in advertisements in lieu of or in addition to the traditional form of the firm name?

The proposed domain name is intended by the inquirer to portray a law firm available to render legal services, particularly in finance and business related matters, on an as-needed basis. The Inquirer believes that the proposed name indicates a law firm capable of responding to specific needs of a particular client community and that the selected domain name will yield better results among searchers than would a traditional "attorney" or "lawyer" name.

As to the first issue, the Committee has decided that a law firm may adopt a domain name for its Internet Uniform Resource Locator ("URL"), that does not include the firm's name or that of any individual attorney within that firm~~,~~ provided that the Internet web site to which the browser is directed clearly and prominently identifies the actual law firm name and its address; the domain name must not be false or misleading; the name must not imply that the lawyer has been recognized or certified as a specialist other than as provided by rules of professional conduct; and, the domain name must not be used in advertising exclusively as a substitute identifier of the firm.

1. Law Firm Domain Names

Subject to one exception, the name under which a lawyer or law firm practices in New Jersey must "include the full or last names of one or more of the lawyers in the firm or the names of a person or persons who have ceased to be associated with the firm through death or retirement." RPC 7.5(a).

Several New Jersey opinions have guided the Bar on the use of firm names and trade names. For purposes of advertising the firm's location on the Internet, the use of the alternative firm name is distinguished from the more restrictive application discussed in Committee on Attorney Advertising Opinion 2, 120 N.J.L.J. 789, (October 29, 1987) which refers to the formal firm name. Furthermore, the proposed adoption of the URL domain name is distinguished from the use of additional identifying language affixed to a firm's name and enjoined by Committee on Attorney Advertising Opinion 10, 129 N.J.L.J. 270, (September 26, 1991) because the formal name must be preserved and used on the Internet. Opinion 10 continues to provide reliable guidance to firms selecting the identification name permissible as a URL. Opinion 10 is overruled to the extent that, for purposes of URL firm identification, the URL identifier may describe the practice, not necessarily the identity of the attorneys in the firm. The trade name restrictions defined by Advisory Committee on Professional Ethics Opinion 435, 104 N.J.L.J. 305, (October 4, 1979), remain unchanged.

There are no New Jersey ethics opinions on this subject, but ethics authorities in New York, Arizona, Texas, and Ohio have issued opinions holding that domain names are not subject to the same regulation as a traditional firm name and a URL identifier may be used, unless false or misleading. See, Association of the Bar of the City of New York, Formal Opinion 2003-01, Arizona 97-04, Texas Interpretive Comment 17 (Mach 1996, revised May 2003), Ohio 99-4. The opinion of the Association of the Bar of the City of New York, with which this Committee agrees, holds "that it is ethical under certain circumstances for a lawyer or law firm to employ a domain name that does not include or embody the firm's name or that of any individual lawyer." The New York opinion cautioned that "domain names may not be used as a substitute identifier for the law firm and must comply with the strictures … applied to legal advertisements generally."

Thus, the lawyer or firm is required to provide the following information at the initial or "home" page of the site:

> The actual, formal name of the firm or attorney responsible for the site;
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> The bona fide street location of the law office to which the URL refers and the telephone number of the firm; and

Disclaimers and advisories required by RPC 7.1, 7.2, 7.3 and 7.4.

2. Use of Domain Names in Advertising

The Committee concludes that a firm may use a different form of its name for purposes of Internet access and retrieval of information about the firm and its services. The URL name form may be used provided the name selected is not false or misleading. RPC 7.1(a). The firm employing the domain name may not state, imply, or attempt to practice law using that name in violation of RPC 7.5. The selected name may not communicate false or misleading information "about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement. RPC7.1(a). The domain name may not create an unjustified expectation RPC 7.1(a)(2), state or imply results that can be achieved by means that violated the Rules of Professional Conduct, RPC 7.1(a)(2), or compare the lawyer's service with other lawyers' services, RPC 7.1(a)(3). Furthermore, the Internet form of the firm's name must be for location purposes only and may not state or imply recognition or certification of a specialty other than as authorized by RPC 7.4. The firm may not convert the Internet domain name to the formal name of the firm or use that name in lieu of the formal name as required by RPC 7.5.

The Committee has concluded that under the circumstances outlined in this opinion an attorney or law firm may adopt a domain name that does not include the name of the firm or any of its lawyers. The attorney may use the domain name in advertising as long as the name is for the purpose of locating and identifying a website, not as a substitute way to identify the attorney or law firm. Assuming the law firm is authorized to use the proposed domain name, the firm would also be permitted to use that name as a means to direct potential clients to the firm's web site.