

**FORMAL OPINION NO. 2005-169**  
**Information About Legal Services:**  
**Firm Names—Retired Partner Mediator**

**Facts:**

Lawyer *A* is a former partner in the *AB&C* Law Firm. Lawyer *A* has retired from the active practice of law but continues to practice as a mediator. Lawyer *A* also consults with members of the *AB&C* Law Firm and receives a salary from the firm. Lawyer *A*'s name continues to be used in the firm name and Lawyer *A* is identified on the firm's letterhead as "available solely as mediator." Lawyer *A* has ceased to maintain PLF coverage under ORS 9.080(2)(a), which requires coverage for lawyers "engaged in the private practice of law."

**Questions:**

1. May the *AB&C* Law Firm continue to use Lawyer *A*'s name in the firm name and list Lawyer *A* on the firm's letterhead as a mediator?
2. May Lawyer *A* work as a consultant within the firm if Lawyer *A* no longer maintains PLF coverage?

**Conclusions:**

1. Yes.
2. Yes, qualified.

**Discussion:**

Oregon RPC 7.5 provides:

(a) A lawyer may use professional announcement cards, office signs, letterheads, telephone and electronic directory listings, legal directory listings or other professional notices so long as the information contained therein complies with Rule 7.1 and other applicable Rules.

....

(c) A lawyer in private practice:

(1) shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under such name or under a name that contains names other than those of lawyers in the firm;

....

(3) may use in a firm name the name or names of one or more of the retiring, deceased or retired members of the firm or a predecessor law firm in a continuing line of succession. The letterhead of a lawyer or law firm may give the names and dates of predecessor firms in a continuing line of succession and may designate the firm or a lawyer practicing in the firm as a professional corporation.

(d) Except as permitted by paragraph (c), a lawyer shall not permit his or her name to remain in the name of a law firm or to be used by the firm during the time the lawyer is not actively and regularly practicing law as a member of the firm. During such time, other members of the firm shall not use the name of the lawyer in the firm name or in professional notices of the firm. This rule does not apply to periods of one year or less during which the lawyer is not actively and regularly practicing law as a member of the firm if it was contemplated that the lawyer would return to active and regular practice with the firm within one year.

(e) Lawyers shall not hold themselves out as practicing in a law firm unless the lawyers are actually members of the firm.

Oregon RPC 7.1 provides, in pertinent part:

(a) A lawyer shall not make or cause to be made any communication about the lawyer or the lawyer's firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication:

(1) contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication considered as a whole not materially misleading;

...

(7) states or implies that one or more persons depicted in the communication are lawyers who practice with the lawyer or the lawyer's firm if they are not;

...

(11) is false or misleading in any manner not otherwise described above; or

(12) violates any other Rule of Professional Conduct or any statute or regulation applicable to solicitation, publicity or advertising by lawyers.

These rules permit the use of Lawyer A's name in the firm name. Because Lawyer A's professional activities are limited to mediation, which is not the practice of law, Lawyer A is retired within the meaning of Oregon RPC 7.5(c)(3). The firm may hold out Lawyer A as "available [to clients] solely as a mediator" if this representation is true and Lawyer A's conduct is lawful. Under Oregon law, PLF coverage is required only

of lawyers who engage in the private practice of law. ORS 9.080. Because mediation is not the practice of law, a lawyer who limits services to mediation is not required to have PLF coverage. *Cf. In re Kluge*, 332 Or 251, 27 P3d 102 (2001); *Balderree v. Oregon State Bar*, 301 Or 155, 719 P2d 1300 (1986). Moreover, Lawyer A can provide consulting advice to others engaged in the firm's legal practice without personally practicing law. *See also* OSB Formal Ethics Op No 2005-65 (nonlawyer personnel may be listed as such on letterhead). Affected clients should be informed that Lawyer A's participation is advisory only, and that Lawyer A does not assume responsibility for the handling of any client's matter.

**Approved by Board of Governors, August 2005.**

---

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.19, 12.16 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§58, 98 (2003); and ABA Model Rules 7.1, 7.5.