

State Bar of New Mexico

Ethics Advisory Committee

FORMAL ETHICS ADVISORY OPINION

DATE: April 3, 2006

TOPIC: Naming Firms "& Associates"

RULES IMPLICATED: Rule 16-705, Firm names and letterheads, Rule 16-701, Communications concerning a lawyer's services.

QUESTION:

Can a lawyer call the lawyer's firm "& Associates" where all lawyers are named in the heading and "& Associates" is meant to refer to support staff and occasional non-employee associated attorneys?

SHORT ANSWER:

Calling a business "& Associates" when all lawyers in the firm are named in the firm name is misleading and violates NMRPC 16-705.

FACTUAL BACKGROUND:

The lawyer is a lawyer with staff including legal assistants and contract paralegals. The lawyer on some cases associates with other lawyers sharing the fee according to the amount of work done. The lawyer wishes to call his firm "Lawyer & Associates." Alternatively, lawyer has a partner named "Attorney" and wishes to name the firm "Lawyer, Attorney & Associates."

ANALYSIS:

New Mexico Rule of Professional Conduct 16-705 A states that "A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 16-701. Rule 16-701 prohibits statements that may directly or indirectly be misleading concerning the lawyer's services." It is well accepted in the legal community that an "associate" is an attorney that works for a firm. "Associates,"

at least in the legal context, do not include support staff such as legal assistants or investigators. Numerous other jurisdictions have addressed this issue and, without exception, stated that "associates" means lawyers and does not include staff. See for example, Utah,

Colorado,¹ Florida,² South Carolina,³ and Arizona.⁴ This list is not exhaustive.

The use of the name "Lawyer & Associates" by a sole practitioner, or "Lawyer, Attorney & Associates" by a two-lawyer firm, is misleading to the public in general because it implies that more lawyers are in the firm than there actually are. This usage violates Rule 16-701.

CONCLUSION:

A lawyer may not call the firm "& Associates" when all lawyers are already named in the firm name without violating Rule 16-701. "Associates" are lawyers who are employees of the firm, not legal assistants and not other lawyers who merely associate with the firm for specific cases. Appending "& Associates" implies that there are yet more lawyers in the firm than those named.

¹ http://www.cobar.org/static/comms/ethics/fo/fo_8.htm

² The Florida Bar v. Fetterman, 439 So.2d 835 (Fla., 1983)

³ In the Matter of Mitchell, 614 S.E.2d (SC, 2005)

⁴ <http://azbar.org/EthicsOpinions> Opinion 90-1.