

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD
RESPONSE TO COMMENTS RECEIVED ON
OPINION NO. 20

The Board's Opinion Committee received sixteen formal comments in response to proposed Opinion No. 20. In addition, the Committee was provided with a number of emails, some whose authors were not identified. All comments were carefully considered. The Board thanks all who took the time to share their views on the matter.

Very few comments took exception with the Opinion's underlying premise that the word "associates" is false and misleading when used in a law firm name, letterhead or other professional designation to convey the impression the law firm has more attorneys practicing law with the firm than is actually the case. Even comments expressing concern about the Opinion acknowledged, in the words of one formal comment, that "[t]here was general agreement that the use of the term 'and associates' in the name of a law firm could be inaccurate and potentially misleading in a solo practice or firm employing only one or two lawyers."

Some comments expressed concern over the impact Opinion No. 20 may have on solo practitioners who may have used the word inappropriately in the past and will have to change their law firm name and letterhead. In response to requests for additional time for firms to transition into compliance, the Board believes it is appropriate to extend the date the Office of Lawyers Professional Responsibility should defer invoking the Opinion until January 1, 2010. The comment to Opinion No. 20 is so amended.

A few comments expressed concern over the use of a firm name contrary to Opinion No. 20 pursuant to a pre-existing contract, such as a contract for an advertisement in telephone books. To the extent a lawyer has already contracted for such an advertisement, the continued availability of the advertisement or other contracted for use of the firm name for the duration of the contract term should not be the basis for discipline. The Comment to Opinion No. 20 is so amended.

A few comments asked that lawyers currently using the word "associates" in a firm name contrary to Opinion No. 20 be allowed to continue doing so. The Board believes "grandfathering" out-of-compliance existing firm names would be inappropriate and unfairly create a two-tiered system.

A few comments complained there was no empirical evidence of clients being misled or harmed. The Board does not believe such evidence is necessary for the Board to express an opinion on a matter.

Negative comments tended to fall into three categories: 1) the Opinion unfairly picks on solo practitioners, 2) the Board should focus instead on law firms using the names of deceased lawyers, and 3) the Board should direct its attention to other more important matters.

Regarding point 1, Opinion No. 20 does indeed directly affect some solo practitioners, but that is the point. It is because there are solo practitioners and others who use the word “associates” in violation of Rules 7.1 and 7.5, Minnesota Rules of Professional Conduct (MRPC), that Opinion No. 20 was proposed.

Regarding point 2, complaints about the use of the names of deceased lawyers in a law firm name overlook Rule 7.5(a), MRPC, which authorizes law firms to use trade names and Comment 1 to Rule 7.5, MRPC, which provides that “[a] firm may be designated . . . by the names of deceased members where there has been a continuing succession in the firm’s identity or by a trade name.”

Regarding point 3, the Board believes Opinion No. 20 does address an important topic and helps clarify a matter of some confusion and disagreement among members of the bar, as evidenced by the strong opinions expressed in comments received in support of and in opposition to Opinion No. 20. To those commentators who suggest there are matters of more pressing importance, the Board’s Opinion Committee welcomes suggestions for other topics for future Opinions.