

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF RULE 7.5 OF THE RULES OF
PROFESSIONAL CONDUCT (APPENDIX
TO SDCL 16-18)

RULE 98-37

A hearing having been held on October 23, 1998, at Sioux Falls, South Dakota, relating to the amendment of Rule 7.5 of the Rules of Professional Conduct (Appendix to SDCL 16-18), and the Court having considered the amendment, the correspondence and oral presentations relating thereto, if any, and being fully advised in the premises, now, therefore, it is

ORDERED that said rule (Appendix to SDCL 16-18) be and it is hereby amended to read in its entirety as follows:

Rule 7.5. Firm Names and Letterheads.

(a) 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.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

(e) The disclosure required in Rule 1.4(c)(1) or (2) shall be in black ink with type no smaller than the type used for showing the individual lawyer's names.

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COMMENT:

A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic". Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic", an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm.

With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones", for that title suggests partnership in the practice of law.

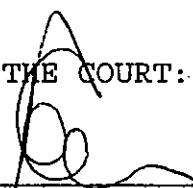
Rule 7.5(e) establishes the requirements for the letterhead component for all lawyers required to make the disclosure of the absence of professional liability insurance. While a lawyer may choose any color of ink for his or her letterhead, the disclosure component must be in black ink. The intent of this requirement is to avoid, for example, a lawyer selecting yellow bond paper for letterhead and printing the mandated disclosure in yellow ink. Further, recognizing the great variance of letterhead styles, rather than mandating a minimum type size, the rule requires that the disclosure be printed with type size no smaller than the type size used to print the lawyer's name. If a lawyer utilizes letterhead that omits the lawyer's name, then the disclosure shall be printed in type size reasonably necessary to comply with the disclosure requirement. Although not required, it is anticipated that most lawyers will prepare letterhead with the disclosure appearing centered and at the bottom of the letterhead.

IT IS FURTHER ORDERED that this rule shall become effective January 1, 1999.

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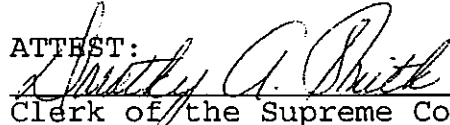
DATED at Pierre, South Dakota, this 25th day of
November, 1998.

BY THE COURT:



Robert A. Miller, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)

**SUPREME COURT
STATE OF SOUTH DAKOTA
FILED**

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Clerk