

1986 Oregon Ethics Rule Change Affected Law Firm Names

What's in a Name?

By Barry P. Caplan

Let's start with some trivia. What are the current names of the following longtime Oregon law firms?

Carey & Kerr

Northrup & Gilbert

McCain & Fenton

Pendergrast Spackman and Bullivant

Tonkon Torp and Galen

Answers please . . .

Stoel Rives

Miller Nash

Lane Powell

Bullivant Houser

Tonkon Torp

The first three are among the oldest firms in Oregon, having initially been formed by the named founders in the late 1870s. Pendergrast started in 1938 and Tonkon opened in the 1950s.

So, why have those longstanding firms gone through such name changes? Until 1986, those founders and any other partners in Oregon law firms who died or retired could no longer have their names in the firm name.

In 1985, Gilbert Sussman, the founder of Sussman Shank Wapnick Caplan and Stiles, died while still active in practice. The prior year, Mo Tonkon, founder of Tonkon Torp and Galen, had died. One other leader of a small Oregon firm, Harvey Benson, also had died around this time. All three law firms had wanted to retain their founders' names. Each of the surviving members of the firms, however, were surprised to learn under the then-existing Oregon ethics laws, the firms were required to remove the names of their founders within one full year from their death or retirement. Oregon was one of a handful of states that had this rule in place. Supposedly, the rule was intended to protect the public from deceptive trade

practices by showing a named partner who obviously was not available to serve prospective clients. The wisdom of such a rule had apparently never been reviewed before by the Oregon State Bar.

In 1986, the Oregon State Bar conducted its business at its annual meeting, which was held in Salem that year. After discussion among the three firms and many others, it was agreed that a resolution be proposed at the business session of the meeting to change the rule. At that time, it was not necessary to be an attendee at the whole convention to vote on resolutions in the business meeting.

The aforementioned three firms had just a small number of lawyers, so they felt they all needed to show up to vote for the resolution. They did this by chartering a bus to get all of their members to Salem for the vote. The firms also reached out to bigger firms that had many lawyers attending. The consensus was the time had come to change the rule.

Being Oregon, one will not be surprised to learn that there was substantial opposition. One opponent was quite stern in his comments on the floor of the convention. He said, "Oregon was the state with a bottle bill, public beaches and no self-service gas stations." He concluded that, "We want truth in packaging in the names of our law firms!" In the discussion and debate, one of the affected managing partners pointed out that here in Oregon we also had Price Waterhouse CPAs and no Oregonian had ever been deceived in going to that firm expecting to see either Price or Waterhouse.

There was support from many attending lawyers, in addition to the proponents of the resolution. The resolution narrowly passed and thereafter firms have not been required to remove partners from firm names after the death or retirement of such named partners. While some of the oldest and largest

firms in Oregon went through numerous name changes before 1986, they have been able to retain names such as Stoel Rives and Miller Nash ever since, despite losing named partners. Most firms have shortened the names to one or two longtime partners, but there is no limit requiring that.

Oregon ethics rules now consider firm names as the same as trade names. In fact, many firms now use names other than the names of partners. The change in the rule in 1986 fortunately preceded the arrival of many Seattle firms that ventured into our state. Now, there are several regional and national firms who have set up offices in Portland. Many of those firms have names of long deceased or retired partners and would have wanted to keep their name identification the same as it is elsewhere when the old rule was in effect.

It is ironic that the foresight of three relatively small business firms triggered a change that has assisted the continued growth and development of the Oregon State Bar and the legal profession in Oregon. ■



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