



Committee on Professional Ethics

Opinion 850 (1/19/11)

- Topic:** Law firm name – former partner
- Digest:** A law firm may not use the name of a former partner in the firm name if the former partner continues to practice law elsewhere.
- Rules:** 7.5(b), 8.4(d)

QUESTION

1. May a law firm use the name of a former partner in its firm name if the former partner departs from the firm but continues to practice law as general counsel to a corporation?

FACTS

2. The inquirer is a member of a law firm, fictionally styled ABCD. Named partner B was recently hired as an officer and general counsel of a closely held corporation located in the same city as the firm. Upon accepting this position, B withdrew as a partner of ABCD. B continues to have a close social relationship with the law firm and regularly refers matters to the firm, but B no longer participates in law firm matters and neither draws an income nor takes a salary from the firm.

3. ABCD prefers not to change the law firm name, however, “due to cost and the possibility of confusion that would be caused by a name change.” ABCD, which is comprised of twenty-five lawyers (of whom ten are partners), “does nothing intentionally to trade off B’s name or reputation.” Based on the fact that B is now employed by a corporation as general counsel, does not compete with the law firm in any way, does not hold himself out as being available to take on matters from the public, and does not take on matters from the general public for compensation, the inquirer asks whether B has “retired” from the practice of law so that the firm can continue to include B in the firm name.

OPINION

4. The question is governed by Rule 7.5(b) of the New York Rules of Professional Conduct, which provides that “[a] lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm. . . .” *Cf.* Rule 7.5, cmt. 1 (“In order to avoid the possibility of misleading persons with whom a lawyer deals, a lawyer should be scrupulous in the representation of professional status. Lawyers should not hold themselves out as being partners or associates of a law firm if that is not the fact, and thus lawyers should not hold themselves out as being partners or associates of a law firm if that is not the fact”). Rule 7.5(b) includes an exception, however, allowing a firm to “use as, or continue to include in its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession.”

5. In N.Y. State 266 (1972), we interpreted the relevant portion of Rule 7.5(b)’s identical predecessor provision in the New York Lawyer’s Code of Professional Responsibility, DR 2-102(B), and concluded that “[a] law firm may continue the name of a retired partner in the partnership name provided he does not practice law independently of the firm. . . .” We noted that “[s]o long as the former partner has a continuing relationship with the firm and to the extent he practices law it is with his former firm, he will not be considered to be practicing independently of the firm and the firm may properly continue his name as part of the firm name.”

6. Here, however, B is still actively engaged in the practice of law as the general counsel to a corporation. While Rule 7.5(b) allows a law firm to use the name of a retired member of the firm, B has not “retired” from the practice of law within the meaning of that provision. *See* 22 NYCRR § 118.1(g) (“An attorney is ‘retired’ from the practice of law when, other than the performance of legal services without compensation, he or she does not practice law in any respect and does not intend ever to engage in acts that constitute the practice of law.”); *cf.* Rule 1.17(a) (“Retirement shall include the cessation of the private practice of law in the geographic area ...”). Therefore, Rule 7.5(b) does not permit the continued use of B’s name in the firm name. *See also* former New York Lawyer’s Code of Professional Responsibility EC 2-11 (“the name of a partner who withdraws from a firm but continues to practice law should be omitted from the firm name in order to avoid misleading the public”).

7. Moreover, using the firm name ABCD after B’s withdrawal as a partner of ABCD, even though B continues the active practice of law elsewhere in the same geographic area, violates Rule 7.5(b), because the name ABCD “is misleading as to the identity of the lawyer or lawyers practicing under [the] name.” *See* North Carolina Formal Opinion

20 (2007) (opining that if an attorney leaves a firm and begins engaging in the private practice of law, the firm could not continue to use the attorney's surname in the firm name because it would be misleading); Maryland Ethics Op. 00-03 (1999) (professional corporation may not continue to include the name of a former member of the firm who is no longer a shareholder and is practicing elsewhere, as such designation would be misleading); District of Columbia Op. 277 (1997) (“[i]t is . . . misleading to include in a firm name the name of a lawyer practicing elsewhere”); see *also* Rule 8.4(d) (“A lawyer or law firm shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”).

CONCLUSION

8. A law firm may not use the name of a former partner in its firm name when the former partner departs from the firm but continues to practice law as general counsel to a corporation.

(55-09)