



Committee on Professional Ethics

Opinion 861 (4/29/11)

Topic: Name and ownership of the New York office of a law firm

Digest: The New York office of a law firm cannot operate under a trade name, nor can it operate under a name that does not include the name of any current or deceased partner or a name that combines the name of a current or deceased partner with a trade name. The New York office of a law firm operating as a PLLC may have as one of its owners another PLLC located outside New York so long as all of the owners of the out-of-state PLLC are attorneys and all legal fees generated by the out-of-state PLLC are distributed only to attorneys. A lawyer admitted in New York and another jurisdiction that permits a law firm to practice under a trade name may be of counsel to a firm with a trade name.

Rules: 5.4, 7.5(b), 8.5

FACTS

1. The inquirer is admitted to the New York bar and is of counsel to a law firm that currently operates in State X. The law firm has asked the inquirer to open a New York office of the firm. The firm's name in State X is the XYZ Law Group, where "X," "Y," and "Z" are the first letters of the firm's practice areas.

QUESTIONS

2. These facts raise four distinct questions:

- a. May the New York office of a law firm ethically operate under the name XYZ Law Group where “X,” “Y,” and “Z” are the first letters of the firm’s practice areas?
- b. May the New York office of a law firm ethically operate under the name Doe XYZ Law Group where Doe is the name of a New York-admitted lawyer who is of counsel to the firm?
- c. May a New York firm that operates as a PLLC have an out-of-state PLLC as an owner?
- d. May a New York lawyer be of counsel to an out-of-state firm that is permitted to operate under a trade name?

OPINION

Question (a): May a law firm ethically operate in New York under the name XYZ Law Group where “X,” “Y,” and “Z” are the first letters of the firm’s practice areas?

3. The first question is answered by Rule 7.5(b) of the New York Rules of Professional Conduct, which provides:

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 lawyers in the firm ... and, if otherwise lawful, a firm may 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. . . . A lawyer or law firm may not include the name of a nonlawyer in its firm name....

4. Although Rule 7.5(b) does not define “trade name,” in N.Y. State 740 (2001), this Committee opined that “using a name that is not the legal name of one or more partners or former partners in the law firm constitutes use of a trade name.” In N.Y. State 636 (1992), this committee concluded that a lawyer could not use a firm name that did not include the name of any attorneys associated with the firm, because doing so would be misleading. Thus, a New York firm could not operate under the name XYZ Law Group because XYZ Law Group, under these facts, is a trade name.

Question (b): May the New York office of a law firm ethically operate under the name Doe XYZ Law Group where Doe is the name of a New York-admitted lawyer who is of counsel to the firm?

5. The second question involves the use of the surname of a non-partner in the out-of-state firm coupled with the trade name of the out-of-state firm. In N.Y. State 732 (2000), this Committee opined that an attorney named X and a number of associates could practice under the name the X Law Group. That opinion followed N.Y. State 495

(1978), where this Committee opined that the Law Firm of John Doe could not operate a branch under the name “Law Firm of Richard Roe” where Richard Roe was not a partner in the John Doe law firm. We noted: “If there is no true relationship analogous to that of partners between the firm's stockholders and the lawyer who is intended to staff its branch office, the use of that lawyer's name for the branch office would be misleading. The relationship must be analogous to that of a true partnership and must include a genuine sharing of profits, liabilities and professional obligations.” Thus the use of the name Doe XYZ Law Group (and the like) would be improper where Doe was not a partner of the firm.

6. Even if the attorney whose name was used as part of the law firm name was a partner in the firm and admitted to practice in New York, the New York office of the firm could not practice under the name Doe XYZ Law Group. Rule 7.5(b) also requires that the firm name not be misleading as to the identity of the lawyers practicing under such name. A trade name can be used as a motto that is used in conjunction with the name(s) of lawyer principals. See N.Y. State 636 (1992) (approving use of the term “The Will Store” in conjunction with names of the law firm’s principals); *von Wiegen v. Committee on Professional Standards*, 63 N.Y.2d 163 (1984) (approving the use of “The Country Lawyer” as a motto in conjunction with the lawyer’s name). Use of the trade name as part of the firm name, however, is misleading, since the public will have no idea as to what the letters refer.

Question (c): May a New York firm that operates as a PLLC have an out-of-state PLLC as an owner?

7. The third question involves ownership of one PLLC by another. Under the proposal made to the inquirer, the New York branch office of the XYZ Law Group would be set up as a New York PLLC. The XYZ Law Group operates as a PLLC in State X and would be an owner of the New York branch office.

8. Rule 5.4 of the New York Rules provides that “[a] lawyer or law firm may not share legal fees with a nonlawyer” (with exceptions not relevant here). The question is whether Rule 5.4 would prevent the PLLC located in State X from being an owner of the New York PLLC. So long as the PLLC in State X is owned entirely by attorneys¹ and all legal fees generated by the State X PLLC are distributed only to attorneys, there is no sharing legal fees with a nonlawyer within the meaning of Rule 5.4. In that case, the PLLC in State X could be an owner of the New York PLLC. (Whether the substantive law regarding PLLCs in New York or in State X allows one PLLC to own all or part of another PLLC is a question of law on which we express no opinion.)

¹ By “attorney” we mean a person licensed to practice law in a US jurisdiction or in a jurisdiction determined upon inquiry to provide persons admitted or licensed to practice law with education, training and ethical standards comparable to those of American lawyers. See N.Y. State 806 (2007) (interpreting the predecessor to Rule 5.4, DR 2-107(A)).

Question (d): May a New York lawyer be of counsel to an out-of-state firm that is permitted to operate under a trade name?

9. The fourth question addresses whether a lawyer admitted in New York and in another jurisdiction that permits a law firm to practice under a trade name may be of counsel to a firm with a trade name even though the lawyer could not do so in New York. Rule 8.5(a) provides that a lawyer admitted to practice in New York is subject to the disciplinary authority of New York regardless of where the lawyer's conduct occurs. Rule 8.5(b)(2) provides, however, that "[i]f the lawyer is licensed to practice in [New York] and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices." Because the conduct—practicing with a firm that uses a trade name—principally occurs in the other jurisdiction, the applicable ethical rules would be those of the other jurisdiction. Assuming it is ethical to practice under a trade name in that jurisdiction (a question we do not have the jurisdiction to answer), the lawyer could do so.

CONCLUSION

10. To summarize, we answer the four questions as follows:

(a) The New York office of a law firm may not ethically operate under a trade name.

(b) The New York office of a law firm may not operate under either a name that does not include the name of a current or deceased partner or a name that includes the name of a current or deceased partner combined with a trade name.

(c) A law firm operating as a PLLC in New York may have as one of its owners another PLLC operating in State X so long as all of the owners of the PLLC in State X are attorneys and all legal fees generated by the PLLC in State X are distributed only to attorneys.

(d) A lawyer admitted in New York and another jurisdiction that permits a law firm to practice under a trade name may be of counsel to a firm with a trade name.

(26-10)