



**New York State Bar Association
Committee on Professional Ethics**

Opinion 1095 (5/6/2016)

Topic: Advertising; firm name

Digest: When a law firm changes its name by adding the name of a partner, it has a reasonable time to change its existing advertising to the new firm name. What is a reasonable time depends on multiple factors, including whether the existing ads are misleading, and on the cost and ease of making the changes. Website domain names are not required to reflect the legal name of the firm, and large building signs that constitute branding rather than advertising are not subject to the advertising rules.

Rules: 7.1(a) & (h), 7.5(a), (b), & (e)

FACTS

1. A law firm changed its name from A & B to A, B & C by adding the name of C, an existing partner.
2. Some of the firm's existing advertising -- including television commercials and bus shelter advertisements -- uses A & B, the firm's old name. The firm also uses the firm's old name on large signs on two sides of the firm's office building, and the domain name of the firm's website continues to reflect the firm's old name.

QUESTION

3. When a law firm changes its name must it immediately change all of its advertising and branding material to the new firm name?

OPINION

4. Rule 7.1(a)(1) of the New York Rules of Professional Conduct (the "Rules") prohibits a lawyer or law firm from using an advertisement that contains statements "that are false, deceptive or misleading." Rule 7.1(h) requires that all advertising, among other matters, include "the name of the lawyer or law firm whose services are being offered." Rule 7.5(a) permits a lawyer or law firm to "use internet web sites, professional cards, professional announcement cards, office signs, letterheads or similar professional notices or devices, provided the same do not violate any statute or court rule and are in accordance with Rule 7.1." Rule 7.5(b) prohibits a lawyer from practicing under "a name that is misleading as to the identity of the lawyer or lawyers practicing under such name."
5. Having these Rules in mind, we turn to their application to the facts here – that the firm has added an existing partner's name to the firm name. (For the purposes of this opinion we

assume that the law firm as a partnership or LLC has complied with any provisions of law that apply to the firm's change of name.)

Television Commercials and Bus Shelter Advertisements

6. Television commercials and bus shelter advertisements are both advertisements within the meaning of Rule 1.0(a) because they are public communications made by a lawyer about the law firm's services, the primary purpose of which is for the retention of the lawyer. Thus, they are subject to the requirements of Rule 7.1, including the requirement in Rule 7.1(a)(1) that they not contain statements that are false, deceptive or misleading, and the requirement in Rule 7.1(h) that they include the name of the lawyer or law firm whose services are being offered.

7. Here, the law firm's television and bus shelter advertisements do not contain the full and current name of the firm. In N.Y. State 1030 (2014), we held that a law firm that changed its firm name by adding the name of a new partner could continue to use its old letterhead and old checks while the remaining stock was being depleted, as long as the firm was either the same firm (with a new name) or a legal successor to the business and property of the original firm. We said: "[W]e do not believe use of the old letterhead would be misleading while the remaining stock is being depleted merely because it does not reflect the new name of the firm." We believe a similar grace period applies here, and that the firm has a reasonable period to change its advertising to reflect its new name.

8. A law firm with a changed name should take into account a number of factors in determining what is a reasonable time to change its advertising to reflect its new name. The first factor is whether the existing advertising is misleading. *See* N.Y. State 1030 (quoting Rule 7.5's prohibition against a law firm practicing under a name that is misleading as to the identity of the lawyer or lawyers practicing under the name). Law firm names are not required to contain the names of all the firm's partners, so the fact that a given partner's name does not appear in the firm name is not itself misleading. *See* N.Y. State 1030 (use of old letterhead while old stock is being depleted would not be misleading because it is common for law firm names not to include the name of all partners in the firm).

9. A different situation may exist if a name partner leaves the firm to practice in another firm or to go into the government; in that case, continuing to use the old name may mislead the public as to the lawyers who practice in the firm, making it unreasonable to fail to correct the firm's advertising as soon as possible.

10. Another factor is the ease of correcting the firm name. For example, in N.Y. State 1030, we were asked if the firm could continue to use checks from its general account and its trust account. We opined that, as long as the firm was the same or a successor firm, the firm could continue to use the old checks until they ran out. We also said that it would be desirable to indicate the change in the firm name on the old checks, but we recognized that changing bus shelter advertisements and television commercials is significantly more difficult than making a simple written or rubber-stamped change on a check, and the law firm cannot simply make those

changes itself as it can on a check. Accordingly, a reasonable time to change bus shelter advertisements or television advertisements will depend on how long it takes to create and arrange to substitute new advertisements.

11. A related factor is the cost of making the changes on the firm's advertising. Here, using the old commercials and bus shelter advertisements is somewhat analogous to using the old letterhead and checks. We believe a reasonable period to make the change will ordinarily be measured by the period covered in the advertising contract. For example, if the period for which the bus shelter ads will run is 90 days, then the firm should correct the firm name in its ads at the end of the 90-day period. If the firm makes new television commercials or bus shelter advertisements before the contractual period ends, the new ads clearly should use the new name.

Large Building signs.

12. Comment [6] to Rule 7.1 points out that not all communications made by a lawyer or law firm are advertising. Comment [8] to Rule 7.1 explains:

Some communications by a law firm that may constitute marketing or branding are not necessarily advertisements. For example, pencils, legal pads, greeting cards, coffee mugs, T-shirts or the like with the law firm name, logo, and contact information printed on them do not constitute "advertisements" within the definition of this Rule if their primary purpose is general awareness and branding, rather than the retention of the law firm for a particular matter.

We believe that the large building signs with the old firm name do not constitute "advertisements." Rather, they are for the purpose of general awareness and branding and thus are not subject to Rule 7.1. Accordingly, the firm may continue to use its old name on branding materials. We recognize that Rule 7.5(a) permits a firm to use "office signs" as long as they comply with Rule 7.1, but we think that refers to small office signs on or near a firm's entrance. Those small office signs must be changed within a reasonable time. But large signs on the side of a building are mere branding, not advertising, and need not be changed to reflect the firm's new name.

Firm's Internet Domain Name

13. Similarly, a law firm domain name need not be the firm's full legal name. Under Rule 7.5(e) "[a] lawyer or law firm may utilize a domain name for an internet website that does not include the name of the lawyer or law firm" provided certain conditions are met. As further explained in Cmt. [2] to Rule 7.5: "As long as a law firm name complies with other Rules, it is always proper for a law firm to use its own name or its initials or some abbreviation or variation of its own name as its domain name." *See also* N.Y. State 1003 ¶ 12 (2014) (concluding that a lawyer who practices under his full name "may use a law firm name that includes only the lawyer's middle name initials and last name, without including his first name."). Accordingly, we conclude on the facts here that the law firm is permitted to use A & B, which is the firm's old

name, as the firm's domain website name. It need not change the domain name to reflect the new name.

CONCLUSION

14. When a law firm changes its name by adding the name of a partner, it has a reasonable time to change its existing advertising to the new firm name. What is a reasonable time depends on whether the old ads are misleading, and on the cost and ease of making the corrections. Website domain names are not required to reflect the legal name of the firm and large building signs that constitute branding rather than advertisements are not subject to the advertising rules.

(12-16)