



New York State Bar Association
Committee on Professional Ethics

Opinion 1152 (5/17/2018)

Topic Law Firm Name: Use of Lawyer's First Name as Firm Name

Digest: A lawyer may not use only a first name as the sole name of the lawyer's firm.

Rules: 7.1, 7.5(b), 8.4(c).

FACTS

1. The inquirer is a New York lawyer who practices in both New York and other jurisdictions. The inquirer's surname, we are told, is shared by a number of other firms in New York and other places where the inquirer practices. To distinguish the inquirer's firm from these other firms, the inquirer proposes to use only the inquirer's first name – say, John or Jane – as the sole name of the firm, as in John's Law Offices LLC or The Jane Law Firm LLC. The inquirer asserts that this nomenclature would not only serve to differentiate the firm from others bearing the inquirer's surname but also effect efficiencies – such as how the staff answers telephone calls – with existing or prospective clients. The inquirer assures us that the inquirer's first name is the first name by which the inquirer is admitted to practice in New York.

QUESTION

2. May lawyer use only the lawyer's first name as the name of the lawyer's firm?

OPINION

3. The answer is no – that lawyer may not use solely the lawyer's first name as the name of a law firm under the New York Rules of Professional Conduct (the "Rules").

4. Rule 7.5(b) provides, in pertinent part, 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." "The prohibition against trade names is broad, permitting use of little beyond the names of lawyers presently or previously associated with the firm." N.Y. State 869 (2011) (lawyer may not use practice area in the name of the law firm). This Rule "serves to protect the public from being deceived about the identity, responsibility or status of the individuals using the name." N.Y. State 920 ¶3 (2012); *accord*, N.Y. State 732 (2000) (applying prohibition on trade names in DR 2-102(B) of the New York Code of Professional Responsibility (the "Code"), the predecessor of the Rules). "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' within the meaning of the predecessor to Rule 7.5(b)." N.Y. State 740 (2001) (applying the

Code). “This broad prohibition has been applied to disallow firm names adding even limited terms to the names of the lawyers in the firm.” N.Y. State 869.

5. We recognize that here, the inquirer proposes to use the inquirer’s real first name to identify the inquirer’s firm. We have not previously had occasion to address this precise issue, nor can we find any other authority that has done so. Nevertheless, although the term “trade name” is not defined by the Rules, we have written numerous opinions that provide useful guidance in interpreting the meaning of that term. N.Y. State 948 ¶ 3 (2012) (so noting). In N.Y. State 948, for example, we concluded that a “law firm name may not include a variant on the lawyer’s name that is created by conjoining the lawyer’s initials with an abbreviation of the lawyer’s surname.” *Id.* ¶ 7. In N.Y. State 920 ¶ 5, we opined that a lawyer may not use a firm name comprised only of the lawyer’s initials. In N.Y. State 861 ¶ 4 (2011), we considered the inclusion in a firm name of initials signifying the firm’s practice area to constitute an impermissible trade name. In N.Y. State 740, decided under the identical language in the Code, we said that a lawyer may not insert an arbitrary letter in the firm name unconnected to the names of lawyers who practiced there. Most recently, in N.Y. State 1138 ¶ 7 (2017), we regarded the English translation of the inquirer’s actual surname “more than a slight deviation from the inquirer’s actual surname” and hence impermissible. *See* N.Y. County 677 (1990) (firm name may not include first name of one partner and contraction of surname of another partner, as such a name would violate requirement that lawyers practice only under names of lawyers in the firm).

6. Common to all these opinions – and to all the opinions we can locate on the meaning of “trade name” – is the presumption that, in requiring the use of only a lawyer’s name in the name of a law firm, the Rules intend to refer to the lawyer’s (or lawyers’) surname(s). In our view, Rule 7.5(b) embeds an understanding that a law firm’s name consists of surnames of lawyers who either practice there or once did. We are unaware of any authority or precedent that breaks from this pattern, and it cannot be denied that, at the time the Rules and their predecessors were adopted, the universal practice in this State was to confine the names of law firms to the surnames of its current or former lawyers. We cannot ignore this context in interpreting the meaning of “trade name.” Rather, customary usage teaches us that the public in general and the legal profession in particular expect that the name of a law firm reflects the surnames of lawyers currently or formerly associated with the law firm. *Cf.* N.Y. State 148 (1970) (under the pre-Code Canon of Ethics, relying on local custom to determine that a firm may continue use of deceased partners in a firm name); N.Y. State 70 (1968) (to the same effect); N.Y. State 45 (1967) (same); *see also* N.Y. State 622 n.3 (1991) (citing the foregoing to reach the same result under the Code).

7. To disrupt that expectation would, in our view, undermine Rule 7.5(b) and therefore be misleading because of the universal convention on the use of surnames in the names of law firms. *See* Rule 7.1(a); Rule 8.4(c). To us, any firm name that does not include the surname(s) of lawyer(s) who either practice at the firm – or, “if otherwise lawful,” as Rule 7.5(b) says, “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” – is inherently misleading. This does not preclude the inclusion of the inquirer’s first name in the name of the firm, provided the surname appears there as well. *See* N.Y. State 1003 ¶ 9 (2014) (if not misleading, a lawyer may “drop his first name to formulate a firm name that includes his middle initials and legal surname”).

8. We note that our conclusion refers only to the name of the inquirer's law firm. Subject to the advertising regulations of Rule 7.1, nothing in the Rules prohibits the inquirer from using the inquirer's first name as a motto, a means of branding, or other advertising. Thus, the inquirer may use only the inquirer's first name in branding the inquirer's law firm on websites and other media to create a distinct identity, provided always that the inquirer complies with Rule 7.1 and any other Rule regulating a lawyer's communications with the public. Rule 7.5, Cmt. [2]; Rule 7.1, Cmt. [8] (permissible to heighten brand awareness); *see In re Von Wiegen*, 63 N.Y.2d 163, 176-77 (1984) (allowing lawyer to accompany firm name with the logo "The Country Lawyer"); N.Y. State 1017 ¶ 8 (2014) (use of the firm's initials in sponsoring a local sports team did not constitute an impermissible use of a trade name); N.Y. State 937 ¶ 3 (2012) (firm may use firm logo on promotional gifts). We likewise find no obligation in the Rules that a law firm's staff must use the firm's full name in responding to telephone calls. N.Y. State 1017 ¶ 8 (allowing use of the firm's initials in answering telephone calls). There are, in short, various ways for the inquirer to establish a unique identity for the inquirer's law firm and to differentiate the law firm from others that may contain the same surname as the inquirer's. Our point here is that the use of a trade name, that is, one omitting the lawyer's surname, is neither consistent with Rule 7.5(b) nor longstanding expectations about law firm names.

CONCLUSION

9. A lawyer may not use only the lawyer's first name as the name of the lawyer's firm but may use a first name, together with the lawyer's surname, in the name of the firm. A lawyer may use only the lawyer's first name in promoting the lawyer's practice as a motto or branding element consistent with the rules governing lawyer advertising.