



New York State Bar Association Committee on Professional Ethics

Opinion 1179 (01/17/2020)

Topic: Conducting law practice under a trade name

Digest: A New York attorney may not practice in New York under a trade name in New York, even when the attorney's office is a branch of an out-of-state law firm that is permitted to practice under the trade name in its home state.

Rules: Rule 7.5(b)

FACTS

1. The inquirer is admitted to practice in New York and wishes to open a New York office for a law firm the main office of which is in California. In California, the firm practices under a trade name, as permitted by the ethics rules in California, which, according to the inquirer, has allowed such trade names since 1979. The inquirer acknowledges that the New York Rules of Professional Conduct (the "Rules") make no such allowance, but asserts that applying the Rules to prevent use of the California trade name in New York deprives the inquirer's firm of the good will embedded in the California trade name – a well-established name, we are told – and thereby frustrates the inquirer's ability to exploit the benefits associated with the name in connection with the New York office.

QUESTIONS

2. May an out-of-state law firm that is permitted to practice law using a trade name in its home state practice law in New York using its trade name?

3. If the inquirer may not practice in New York under the California trade name, may the California firm establish a New York presence with lawyers who are not admitted in New York?

OPINION

4. This inquiry asks whether New York's prohibition on lawyers engaged in the private practice of law using trade names remains in effect, even though the ethical rules of other states permit trade names and the cross-jurisdictional practice of law is becoming more common. The answer is yes. Rule 7.5(b) states in part:

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, except that...a firm may use as, or continue to include in its name the name or names of one or more of the lawyers in the firm...

5. No ambiguity clouds this Rule. “The prohibition against trade names is broad, permitting little beyond the names of lawyers presently or previously associated with a law firm.” N.Y. State 1168 ¶ 12 (2019) (quoting N.Y. State 869 (2011)). “[U]sing 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.” N.Y. State 740 (2001). Thus, we have previously concluded that a lawyer may not use only the lawyer’s first name as a firm name, N.Y. State 1152 (2018), or the phrase, “The Business Dispute Clinic,” N.Y. State 869 (2011), or the area of law in which the lawyer practices, N.Y. State 740 (2001).

6. As explained in N.Y. State 861 (2011), the New York office of a law firm “cannot operate under a name that does not include the name of a current or deceased partner.” In N.Y. State 1023 (2014) the committee said that an attorney licensed only in New York could not be of counsel to an out-of-state firm practicing under a trade name in a state that permits the use of trade names. The opinion notes that a lawyer admitted only in New York could also not become an associate or partner of an out-of-state law firm that practices under a trade name. Thus, we have repeatedly, and we believe correctly, concluded that no circumstances exist in which a New York lawyer may ethically practice under a trade name in New York, even though the use of a trade name is permitted in another state in which the firm has offices.

7. This does not mean that the inquirer may not use the California law firm’s names in other ways, that is, other than as the name of the law firm in New York. Thus, nothing in the Rules prevents the inquirer from saying, for example, that the inquirer’s firm practices in California under firm name XYZ or otherwise truthfully stating in advertising and other branding activities the inquirer’s New York firm is elsewhere known as XYZ. Hence the prohibition on trade names in New York does not entirely deprive the inquirer of the benefits of whatever good will may reside in the name of the California firm.

8. The inquirer’s second question – whether the California firm populated solely by lawyers not admitted in New York may establish a New York presence– is beyond our jurisdiction to answer. This question raises issues of unlawful practice under New York State’s Judiciary Law § 478, about which the committee does not opine, for they present pure questions of law, not ethics.

CONCLUSION

9. A New York lawyer may not practice law under a trade name in New York, even though the use of a trade name is permitted in another state in which the firm has offices.

(21-19)