



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #8

REQUESTED ACTION: Approval of the report and recommendations of the Committee on Standards of Attorney Conduct (COSAC).

Last November, the House of Delegates approved amendments to Rule 7.5 of the Rules of Professional Conduct relating to the names used by law firms. The amendments continued New York's prohibition on lawyers or law firms utilizing trade names or domain names for their practices. Since that time, a lawsuit has been filed in the U.S. District Court for the Southern District of New York, challenging this blanket ban on First Amendments grounds. COSAC has revisited this issue and recommends that Rule 7.5 be amended to prohibit only misleading trade and domain names. The proposed amendments are contained in the committee's report.

This report was published in the Reports Community in March 2020. No comments have been received.

The report will be presented at the April 4 meeting by past COSAC chair Joseph E. Neuhaus.

MEMORANDUM

March 16, 2020

TO: NYSBA Executive Committee and House of Delegates
CC: Kathy Baxter, NYSBA General Counsel
FROM: Committee on Standards of Attorney Conduct (“COSAC”)
SUBJECT: Proposed Amendments to Rule of Professional Conduct 7.5

At its November 2, 2019 meeting, the House of Delegates approved a proposal by the New York State Bar Association’s Committee on Standards of Attorney Conduct (“COSAC”) to amend Rule 7.5 of the New York Rules of Professional Conduct, which sets forth specific rules regarding the names law firms may use in New York. The versions of Rule 7.5(b) & (e) approved by the House continued New York’s existing blanket ban on allowing lawyers or law firms in private practice to practice under trade names or domain names.

Since last November, an out-of-state law firm that practices under a trade name (which is also its domain name) has filed a lawsuit in the United States District Court for the Southern District of New York against eleven New York disciplinary counsel. The suit asserts that New York’s blanket ban on trade names violates the First Amendment to the United States Constitution. (The same out-of-state law firm has filed similar federal court actions in eight other states challenging the rules that prohibit law firms from practicing under a trade name in those states.) After revisiting the issues in light of these lawsuits and other considerations, COSAC recommends amending New York Rule 7.5 to prohibit only *misleading* trade names and *misleading* domain names.

The proposed amendments to Rule 7.5 also (i) reorganize parts of Rule 7.5, (ii) add additional guidance regarding proper and improper law firm names, and (iii) delete parts of Rule 7.5 that are no longer necessary in light of the proposed amendments.

At this time COSAC is *not* proposing amendments to the Comments to Rule 7.5, but COSAC anticipates proposing amendments to the Comments if the Administrative Board of the Courts approves COSAC’s proposed amendments to the black letter text of Rule 7.5. COSAC expects the Comments to make clear, for example, that it is not misleading for a law firm name to include the names of deceased or retired members of the firm (or of a predecessor firm) in a continuing line of succession, as has been the custom in New York for many decades.

Below are clean and redline versions of COSAC’s proposals to amend Rule 7.5, with additions to existing Rule 7.5 underscored in blue and deletions ~~stricken through in red~~.

CLEAN Version of Proposed Rule 7.5

Professional Notices, Letterheads and Names

(a) A lawyer or law firm may use internet web sites, professional cards, professional announcement cards, office signs, letterheads, or similar professional notices or devices, provided the same do not violate these Rules or any statute or court rule.

(b)(1) A lawyer or law firm in private practice shall not practice under:

- (i) a misleading trade name;
- (ii) a misleading domain name; or
- (iii) a name that is misleading as to the identity of the lawyer or lawyers practicing under such name.

(2) *Specific Guidance Regarding Law Firm Names.*

- (i) Such terms as “legal aid,” “legal service office,” “legal assistance office,” “defender office,” and the like may be used only by bona fide legal assistance organizations.
- (ii) A law firm name, trade name, or domain name may not include the terms “non-profit” or “not-for-profit” unless the law firm qualifies for those designations under applicable law.
- (iii) The name of a professional corporation shall contain “PC” or such symbols permitted by law.
- (iv) The name of a limited liability company or limited liability partnership shall contain “LLC,” “LLP” or such symbols permitted by law.
- (v) A lawyer or law firm may utilize a telephone number that contains a trade name, domain name, nickname, moniker, or motto that does not otherwise violate these Rules.

(3) A lawyer or law firm that has a contractual relationship with a nonlegal professional or nonlegal professional service firm pursuant to Rule 5.8 to provide legal and other professional services on a systematic and continuing basis may not include in its firm name the name of the nonlegal professional service firm or any individual nonlegal professional affiliated therewith.

(4) A lawyer who assumes a judicial, legislative or public executive or administrative post or office shall not permit the lawyer’s name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which the lawyer is not actively and regularly practicing law as a member of the firm and, during such period, other members of the firm shall not use the lawyer’s name in the firm name or in professional notices of the firm.

(c) Lawyers shall not hold themselves out as having a partnership with one or more other lawyers unless they are in fact partners.

(d) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.

REDLINE Version of Proposed Rule 7.5

Professional Notices, Letterheads and Signs Names

(a) A lawyer or law firm may use internet web sites, professional cards, professional announcement cards, office signs, letterheads, or similar professional notices or devices, provided the same do not

violate [these Rules](#) or any statute or court rule. ~~and are in accordance with Rule 7.1, including the following:~~

~~(1) a professional card of a lawyer identifying the lawyer by name and as a lawyer, and giving addresses, telephone numbers, the name of the law firm, and any information permitted under Rule 7.1(b) or Rule 7.4. A professional card of a law firm may also give the names of members and associates;~~

~~(2) a professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional offices of a lawyer or law firm or any nonlegal business conducted by the lawyer or law firm pursuant to Rule 5.7. It may state biographical data, the names of members of the firm and associates, and the names and dates of predecessor firms in a continuing line of succession. It may state the nature of the legal practice if permitted under Rule 7.4;~~

~~(3) a sign in or near the office and in the building directory identifying the law office and any nonlegal business conducted by the lawyer or law firm pursuant to Rule 5.7. The sign may state the nature of the legal practice if permitted under Rule 7.4; or~~

~~(4) a letterhead identifying the lawyer by name and as a lawyer, and giving addresses, telephone numbers, the name of the law firm, associates and any information permitted under Rule 7.1(b) or Rule 7.4. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer or law firm may be designated "Of Counsel" on a letterhead if there is a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as "General Counsel" or by similar professional reference on stationery of a client if the lawyer or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.~~

(b)(1) A lawyer or law firm in private practice shall not practice under:

(i) [a misleading trade name;](#)

(ii) [a misleading domain name; or](#)

(iii) [a name that is misleading as to the identity of the lawyer or lawyers practicing under such name.](#)

~~a trade name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that except that the name of a professional corporation shall contain "PC" or such symbols permitted by law, the name of a limited liability company or partnership shall contain "LLC," "LLP" or such symbols permitted by law 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. Such terms as "legal clinic," "legal~~

~~aid,” “legal service office,” “legal assistance office,” “defender office” and the like may be used only by qualified legal assistance organizations, except that the term “legal clinic” may be used by any lawyer or law firm provided the name of a participating lawyer or firm is incorporated therein. A lawyer or law firm may not include the name of a nonlawyer in its firm name, nor may a lawyer or law firm that has a contractual relationship with a nonlegal professional or nonlegal professional service firm pursuant to Rule 5.8 to provide legal and other professional services on a systematic and continuing basis include in its firm name the name of the nonlegal professional service firm or any individual nonlegal professional affiliated therewith. A lawyer who assumes a judicial, legislative or public executive or administrative post or office shall not permit the lawyer’s name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which the lawyer is not actively and regularly practicing law as a member of the firm and, during such period, other members of the firm shall not use the lawyer’s name in the firm name or in professional notices of the firm.~~

(2) Specific Guidance Regarding Law Firm Names.

(i) Such terms as ~~“legal clinic,”~~ “legal aid,” “legal service office,” “legal assistance office,” “defender office,” and the like may be used only by bona fide legal assistance organizations.

(ii) A law firm name, trade name, or domain name may not include the terms “non-profit” or “not-for-profit” unless the law firm qualifies for those designations under applicable law.

(iii) The name of a professional corporation shall contain “PC” or such symbols permitted by law.

(iv) The name of a limited liability company or limited liability partnership shall contain “LLC,” “LLP” or such symbols permitted by law.

(v) ~~(f)~~ A lawyer or law firm may utilize a telephone number ~~which that~~ contains a trade name, domain name, nickname, moniker, or motto that does not otherwise violate these Rules.

(3) ~~A lawyer or law firm may not include the name of a nonlawyer in its firm name, nor may~~ a lawyer or law firm that has a contractual relationship with a nonlegal professional or nonlegal professional service firm pursuant to Rule 5.8 to provide legal and other professional services on a systematic and continuing basis may not include in its firm name the name of the nonlegal professional service firm or any individual nonlegal professional affiliated therewith.

(4) A lawyer who assumes a judicial, legislative or public executive or administrative post or office shall not permit the lawyer’s name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which the lawyer is not actively and regularly practicing law as a member of the firm and, during such period, other members of the firm shall not use the lawyer’s name in the firm name or in professional notices of the firm.

(c) Lawyers shall not hold themselves out as having a partnership with one or more other lawyers unless they are in fact partners.

(d) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.

~~(e) A lawyer or law firm may utilize a domain name for an internet web site that does not include the name of the lawyer or law firm provided:~~

~~(1) all pages of the web site clearly and conspicuously include the actual name of the lawyer or law firm;~~

~~(2) the lawyer or law firm in no way attempts to engage in the practice of law using the domain name;~~

~~(3) the domain name does not imply an ability to obtain results in a matter; and~~

~~(4) the domain name does not otherwise violate these Rules.~~

~~(f) A lawyer or law firm may utilize a telephone number which contains a domain name, nickname, moniker or motto that does not otherwise violate these Rules.~~

[End of Memo]