



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

Opinion 1193 (06/08/2020)

Topic: Law firm name

Digest: Lawyers admitted solely in New York may not practice under a law firm with a trade name, even if a trade name is permitted under the governing rules where the firm is principally organized. An out-of-state law firm that conducts business in New York under a name compliant with the New York ethical rules may truthfully advertise its affiliation with an out-of-state firm that uses a trade name permitted in the other jurisdiction.

Rules: 5.4, 7.5, 8.5

FACTS

1. The inquiring lawyer is admitted to practice only in New York, and is a partner in a firm organized under the rules governing the District of Columbia. In addition to the inquirer, one other partner in the firm who practices principally in New York is admitted both in this State and D.C. Other of the firm's partners principally practice elsewhere, including in D.C.
2. The firm currently practices under a name comprised of the surnames of partners admitted and located in D.C. The inquirer tells us that the firm is considering changing its name to "ABC Law PLLC," with "ABC" lacking the surnames of any current or former partner in the firm. The firm wishes to continue to maintain its New York office using its new name.

QUESTIONS

3. May a New York lawyer practice in New York in a D.C.-based firm bearing a name lacking the surnames of any past or current partner in the firm, even if the lawyer becomes a member of the D.C. bar?
4. After the law firm changes its name to ABC Law PLLC, may the New York office of the firm continue to practice in New York with a firm name comprised of the surnames of current or past partners in the firm, including those who are not admitted in New York?

OPINION

5. Rule 7.5(b) of the New York Rules of Professional Conduct (the "Rules") addresses law firm names:

A lawyer in private practice shall not practice under a trade name, or 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 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,” or “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.

6. Consistent with this Rule, our prior opinions resolve this inquiry. A firm name that is not made up of the legal surnames of one or more former or current partners of the firm constitutes a trade name under the Rules. “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.” N.Y. State 1179 ¶ 6 (2020). See N.Y. State 861 ¶ 4 (2011); N.Y. State 740 (2001). Here, we conclude that the proposed name change is a prohibited trade name in New York.

7. An out-of-state law firm may be an owner of a New York law firm provided that the out-of-state law firm is owned entirely by attorneys and all legal fees are distributed only to attorneys, so as to ensure there is no ownership interest by or fee sharing with non-attorneys in violation of Rule 5.4. N.Y. State 1038 ¶¶ 12-13 (2014) (a New York lawyer “may not join a D.C. firm that includes a non-lawyer partner” or practice in a firm that is a “wholly-owned subsidiary” of a D.C. firm having non-lawyer partners). See N.Y. State 911 ¶ 2 (2012).

8. A lawyer admitted in New York and another jurisdiction may be affiliated with a firm with a trade name if the lawyer principally practices in, and the other jurisdiction ethically permits, the use of trade names. This is because the conduct – practicing under a trade name – principally occurs in the other jurisdiction; accordingly, under the choice-of-law provisions of Rule 8.5(b)(2), the ethical rules that apply would be that of the other jurisdiction. Thus, “a lawyer who is admitted in New York and another jurisdiction that permits a law firm to practice under a trade name, and who principally practices in the other jurisdiction, may be of counsel to a firm with a trade name, even though the lawyer could not do so in New York” N.Y. State 1023 ¶ 8 (2014).

9. Finally, in response to the second question, the inquirer may practice in New York using a firm name comprised of the surnames of current or past partners in the firm, including partners who are (or were) admitted only in D.C. In addition, nothing in the Rules prevents the inquirer from truthfully saying in advertising or other branding that the inquirer’s firm practices in D.C. or elsewhere outside New York under a trade name permitted in those jurisdictions. N.Y. State 1179 ¶ 7. Hence, the prohibition on trade names in New York does not entirely deprive the inquirer of the benefits of whatever goodwill may reside in the new name of the D.C.-based firm.

CONCLUSION

10. Lawyers admitted and practicing solely in New York may not practice under a law firm with a trade name, even if a trade name is permitted under the governing rules where the firm is based. An out-of-state law firm may conduct business in New York under a name that complies with the New York ethical rules, including truthful advertising that the New York firm practices elsewhere under a permitted trade name.

(30-19)