



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

Opinion 1207 (11/09/2020)

Topic: Firm names; trade names

Digest: A law firm may practice in New York using a name that does not include the name of any lawyer currently or formerly practicing in the firm (*i.e.*, under a “trade name”) as long as the name under which the firm practices is not false, deceptive or misleading. A law firm may continue to practice under the same name after a name partner retires from the practice of law.

Rules: 7.5(b); 8.4(c).

FACTS

1. In the wake of the recent amendment to Rule 7.5(b) of the New York Rules of Professional Conduct, three inquiries have come to the Committee asking closely aligned questions.
2. The first inquiry comes from a national law firm that maintains offices in several states where trade names are permitted and currently practices in those states under a trade name we will call “LONG Legal Group.” LONG is an acronym for “Law Office of Norman Grant” (also fictional) who is the sole owner of the firm. In New York, Grant and two New York admitted attorneys, who we will call Hudson and India, practice in a law firm we will call “Grant, Hudson & India, P.C.”
3. The second inquiry comes from a firm located in New York that maintains a physical location on a street we will call “Maple Street,” and wishes to practice under the trade name “Maple Street Law Group.”
4. The third inquiry comes from a lawyer named Jones who informs us that Smith, one of the name partners in a law firm we will call “Smith & Jones, LLP,” will soon be retiring. The remaining name partner, Jones, wants to continue practicing under the same name.

QUESTIONS

5. May a law firm practice under a name that does not contain the name of any lawyers (in other words, under a trade name)?
6. May a law firm practice under a trade name based on its street address?
7. May a law firm continue to practice under a firm name that includes the name of a retired name partner?

DISCUSSION

8. For decades, lawyers have been required to practice under a firm name that contains the name of one or more of the lawyers in the firm or 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. Prior opinions issued by this Committee under this Rule have stressed the purpose of the requirement is to protect the public from being deceived or misled as to the identity of lawyers using or practicing under the firm name.
9. On June 24, 2020, however, the Appellate Divisions issued a Joint Order amending Rule 7.5(b) so that it now reads, in pertinent part:

(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 false, deceptive, or misleading trade name;

(ii) a false, deceptive, or 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) A lawyer or law firm in private practice may not include the name of a nonlawyer in its firm name.

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

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

(vi) 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.-

10. The June 24, 2020 amendment deleted language in former Rule 7.5(b) that prohibited a “firm name containing the names other than those of one or more of the lawyers in the firm” except “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.” Thus, had the Rule remained unchanged, the Committee would have concluded that practicing under a trade name, whether an acronym or a street name, was prohibited.
11. The clear implication of the additions to and deletions from Rule 7.5(b) is that law firm names no longer need to contain the names of lawyers practicing in the firm. However, the Rule as amended reaffirms and makes explicit the longstanding principle that law firm names must not be false, misleading, or deceptive.
12. This principle is reflected in Comment [2] to the Rule 7.5 as amended, which states,

[2] A lawyer or law firm may not use any name that is false, deceptive, or misleading. It is not false, deceptive, or misleading for a firm to be designated by the names of all or some of its current members or by the names of retired or deceased members where there has been a continuing line of succession in the firm’s identity. A lawyer or law firm may practice under a trade name or domain name if it is not false, deceptive, or misleading. A lawyer or law firm also may practice under a distinctive website address, social media username, or comparable professional designation, provided that the name is not false, deceptive, or misleading.

13. Comments [3], [4] and [5] give examples of deceptive or misleading firm names. Among other things, they interpret Rule 7.5 to prohibit a law firm name that (i) falsely implies a connection with a government agency, (ii) contains the name of a deceased or retired lawyer not in a continuing line of succession, (iii) contains the name of a lawyer holding public office, or (iv) implies that lawyers are partners when in fact they are not partners. Those Comments provide:

[3] By way of example, the name of a law firm in private practice is deceptive or misleading if it implies a connection with (i) a government agency, (ii) a deceased or retired lawyer who was not a former member of the firm in a continuing line of succession, (iii) a lawyer not associated with the firm or a predecessor firm, (iv) a nonlawyer, or (v) a public or charitable legal services organization. A lawyer or law firm may not use a name, trade name, domain name, or other designation that includes words such as “Legal Services,” “Legal Assistance,” or “Legal Aid” unless the lawyer or law firm is a bona fide legal assistance organization.

[4] It is misleading to use the name of a lawyer holding a public office in the name of a law firm, or in communications on the law firm’s behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

[5] Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a “firm” as defined in Rule 1.0(h), because to do so would be false and misleading. In particular, it is misleading for lawyers to hold themselves out as having a partnership with one or more other lawyers unless they are in fact partners. It is also misleading for lawyers to hold themselves out as being counsel, associates, or other affiliates of a law firm if that is not a fact, or to hold themselves out as partners, counsel, or associates if they only share offices. Likewise, law firms may not claim to be affiliated with other law firms if that is not a fact.

14. In these inquiries before us, the proposed names do not fit any of the examples of names that would be prohibited as false, deceptive, or misleading. In the first inquiry, the proposed name is merely an acronym using the abbreviated form of the name of the owner of the firm and, in the second inquiry, the proposed name is the name of a street where the law office is located.
15. The third inquiry is slightly different. In the firm of Smith & Jones, LLP, we are told that Smith will soon be retiring but Jones wants to continue practicing under the same name.

In former Rule 7.5(b) (*i.e.*, before June 24, 2020), the black letter text expressly provided that, “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.” That language was deleted by the recent amendments, but only because it was unnecessary now that the amended black letter text permits trade names that are not false, deceptive, or misleading.

16. In any event, essentially the same the language appears in Comment [2], which says: “It is not false, deceptive, or misleading for a firm to be designated by ... the names of retired or deceased members where there has been a continuing line of succession in the firm’s identity.” While the Comments are adopted only by the New York State Bar Association and not by the New York Courts, they are accepted as reliable guides to interpreting the Rules as long as they do not contradict the black letter text. *See* Preamble, ¶ 13 (“The Comments are intended as guides to interpretation, but the text of each Rule is authoritative”). Here, Comment [2] does not contradict the black letter text. Accordingly, it is not false, deceptive or misleading for the law firm of Smith & Jones, LLP, to continue practicing under the same name after Smith retires.
17. Whether a particular firm name is false, deceptive or misleading is a heavily fact-based inquiry, and the outcome will depend on a close context-based examination of the proposed name.
18. In circumstances where a contrary result might be reached, Rule 7.5(b) is not the only relevant rule. Using a firm name or domain name that is false, deceptive or misleading, or using a name that misrepresents the identity of the lawyer or lawyers practicing in the firm, might also constitute conduct involving deceit or misrepresentation in violation of Rule 8.4(c).
19. The general principles set forth in this opinion govern the ethical analysis of the myriad trade names that New York admitted attorneys may choose for their firms now that the use of trade names is no longer prohibited. The ethical propriety of each name under Rules 7.5(b) and 8.4(c) will always turn on the particular facts and circumstances.

CONCLUSION

20. A law firm may practice in New York using a name that is not the name of any lawyer practicing in the firm – in other words, under a trade name – so long as the name under which the firm practices is not false, deceptive or misleading. A New York law firm may continue to include the name of a retired partner in its name.

(16-20 & 17-20)