



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

Opinion 1230 (10/06/2021)

Topic: Firm names; trade names

Digest: A law firm may not include on its letterhead the name of deceased attorney who does not stand in a continuing line of succession with the firm.

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

FACTS

1. The inquirer is a solo practitioner who, for sentimental reasons, would like to include his deceased father's name on the firm's letterhead, but not in the firm name. The letterhead would indicate the year his father was born and the year he died, as well as the fact that the inquirer's father had been admitted to practice law in Canada as a "Q.C." (i.e., Queens Counsel).

QUESTION:

2. May a law firm include on its letterhead the name of a deceased attorney who does not stand in a continuing line of succession with the firm?

OPINION:

3. On June 24, 2020, the Appellate Divisions issued a Joint Order amending Rule 7.5. As amended, Rule 7.5(b), which addresses the names under which a lawyer may practice, now provides in pertinent part:

(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.

4. The June 24, 2020 amendment to Rule 7.5(b) 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." As this Committee stated in New York State 1207 ¶ 11 (2020), "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."

5. Comment [2] to amended Rule 7.5, recognizes the longstanding tradition that “[i]t 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.” Comment [3] to amended Rule 7.5, however, gives examples of firm names that are deceptive or misleading, and one such example is a firm name that “contains the name of a deceased or retired lawyer not in a continuing line of succession” (emphasis added). Accordingly, despite the 2020 amendments to Rule 7.5(b), a law firm is still prohibited from using a firm name that includes the name of an attorney who is not in a continuing line of succession with the firm, because such a name would be deceptive or misleading.

6. If including the name of an attorney who is not in a continuing line of succession with the firm would be deceptive or misleading in a law firm name, then including such a name would also be deceptive or misleading on a law firm’s letterhead. Rule 7.5(a), which was not amended on June 24, 2020, applies to letterhead (as well as web sites, business cards, announcements, signs, and professional notices). Rule 7.5(a) states:

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. [Emphasis added.]

7. Among “these Rules” is Rule 8.4(c), which provides that a lawyer or law firm may not “engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

8. Although Rule 7.5(b) applies by its terms to firm names and not to letterhead, we extend the prohibition against deceptive or misleading firm names to names on a letterhead, both by analogy and pursuant to Rule 8.4(c). If it is deceptive and misleading to list an attorney in the firm name who has had no prior professional affiliation with the firm or its predecessors (i.e., is “not in a continuing line of succession” with the firm), then it is, perforce, equally deceptive and misleading to list the attorney on firm letterhead in a manner that suggests just such a prior professional affiliation. Accordingly, the inquirer may not include the name of his deceased father on his letterhead in the particular fashion that he has proposed.

9. Our opinion does not foreclose the inquirer from honoring his deceased father in some other manner that is related to the inquirer’s practice. For example, the inquirer may use the firm website, firm brochures, or even firm letterhead to include an encomium to his late father. The inquirer can pay homage to his father’s professional achievements or reputation as a Canadian lawyer, even noting the inquirer’s aspiration to model his own professional conduct and career after his father, provided the inquirer makes clear (through a disclaimer or other language) that the inquirer’s father never practiced or associated with the inquirer’s firm.

CONCLUSION:

10. A law firm may not include on its letterhead the name of deceased attorney who does not stand in a continuing line of succession with the firm.