

# New York State Bar Association

## Committee on Professional Ethics

Opinion 732 (9/28/00)

Topic: Trade name; firm name

Digest: A lawyer named "X" whose law firm includes a number of associates may practice under the name "The X Group"

Code: DR 2-102(A); DR 2-102(B); EC 2-11

### QUESTION

Under DR 2-102(B), may an attorney use his or her surname together with the word "group" as a law firm name where the attorney's firm has a number of associates?

### OPINION

The question is raised by an attorney ("X") who has a number of associates as to whether the attorney's firm may do business under the name "The X Group." This question is governed by DR 2-102(B), which provides in pertinent 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 ....

DR 2-102(B) restricts the use of trade names to protect the public from being deceived about the identity, responsibility or status of the individuals using the name. *Matter of Von Wiegen*, 63 N.Y.2d 163, 177, 481 N.Y.S.2d 40, 47 (1984); *see* EC 2-11 ("The name under which a lawyer practices may be a factor in the selection process. The use of a trade name or an assumed name could mislead non-lawyers concerning the identity, responsibility, and status of those practicing thereunder..."); N.Y. State 636 (1992); N.Y. State 459 (1977); N.Y. State 495 (1978); *Matter of Shepard*, 92 A.D.2d 978, 459 N.Y.S.2d 632, 633 (3d Dept. 1983); *see also* *Friedman v. Rogers*, 440 U.S. 1, 14 (1978) (provision prohibiting the use of trade

name by optometrists was not unconstitutional because it furthered the state's interest by protecting the public from deceptive and misleading use of trade names).

Thus, the question is whether the name, "The X Group," would be misleading to the public. Earlier decisions provide some guidance, but ultimately the question whether a particular term would or would not be deceptive calls for an individual determination. By way of example, in *Von Wiegen*, the court held that the use of the phrase "The Country Lawyer" in flyers distributed by the attorney and on his letterhead is not prohibited under DR 2-102. The court reasoned the phrase was simply a motto separate from the attorney's name. The court further held that the public would not be misled because of the format of the flyer and the balance of the letterhead. In contrast, the Third Department held that the use of a firm name "The People's Law Firm of A, Attorney, P.C." in advertising was deceptive and misleading under DR 2-102(A) because the word "People's" misrepresented the nature of the firm. Therefore, DR 2-102(B) prohibited the use of such name by a lawyer as it constituted a prohibited and misleading trade name. *Matter of Shepard*, 92 A.D.2d at 978. Likewise, in N.Y. State 636 (1992), this committee concluded that a lawyer could not use a firm name that did not include the name of any attorneys associated with the firm, because doing so would be misleading.

We do not believe that the name "The X Group" would deceive the public about the identity, responsibility or status of those who use the name. A group is simply "a number of individuals bound together by a community of interest, purpose or function." Webster's Third New World Dictionary (7<sup>th</sup> ed. 1993). The name "The X Group" signifies nothing more than that the attorney X practices law together with a group of other individuals, which is in fact the case. Unlike the term "People," which the court in *Shepard* found to be misleading to the public, the term "Group" is not misleadingly suggestive, would not induce clients to select the law firm based on erroneous assumptions about the firm, and would not misrepresent the nature of the entity operating under that name.

## CONCLUSION

For the reasons stated, the question is answered in the affirmative.

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(28-00)