



Committee on Professional Ethics

Opinion 872 (6/3/11)

Topic: Attorney nicknames and translations of foreign names

Digest: An attorney may, consistent with the Rules of Professional Conduct, use a different first name than the one the attorney listed on the Roll of Attorneys, assuming the name used is not misleading as to the attorney's identity. The attorney must, however, comply with any applicable statutes, rules or guidelines governing attorney registration and name changes.

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

FACTS

1. The inquirer is admitted to practice in New York State and has a Polish first name. This first name is the name under which the inquirer is listed on the Roll of Attorneys and Counselors-at-Law maintained in the office of the Clerk of the Court and the name he uses when submitting papers to court and in any formal communication. For the simplicity of informal communication in English, the inquirer would like to use a somewhat different first name, which he says is an accurate translation of his name from Polish to English. He would also like to use this English name on business cards and on his firm's website.

QUESTION

2. For purposes of business cards, informal communications, and a law firm website, may an attorney use a first name different from the one the attorney has listed on the official Roll of Attorneys?

OPINION

A. Applicable Rules of Professional Conduct

3. Two provisions of the New York Rules of Professional Conduct are relevant here. Rule 7.5(b) provides, among other things, that "[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.” And Rule 8.4(c) prohibits an attorney from engaging in “conduct involving dishonesty, fraud, deceit or misrepresentation.”

4. Under the circumstances presented here, a lawyer’s use of an English name is not misleading as to the identity of the lawyer and is not dishonest, fraudulent, deceitful, or a misrepresentation. Therefore, the name does not run afoul of either Rule 7.5(b) or Rule 8.4(c). We therefore conclude that an attorney may ethically use an accurate English translation of his first name listed on the Roll of Attorneys in informal communications, on business cards, and on his firm’s website. Similarly, an attorney could use a name that is not necessarily an accurate translation, such as a nickname by which the attorney is commonly known, as long as the name is not misleading as to the lawyer’s identity.

5. Our conclusion here is consistent with prior opinions in this realm. In N.Y. City 82-37 (1982), the inquiring attorney practiced for a number of years and was a name partner in his law firm. He sought to obtain a legal name change for himself and his family in court, and asked the City Bar’s ethics committee whether he could continue to use his original name in the practice of law after legally changing his name. Because the attorney had practiced under his original name for many years, the Committee saw little “possibility that his continued use of this name after the name change [was] intended or likely to mislead.” Accordingly, the Committee concluded that using the name would not violate DR 2-102(B), the predecessor provision to Rule 7.5(b). Similarly, in N.Y. City 638 (1943), the ethics committee concluded that it was ethically permissible for an attorney who had been admitted to practice under her “married name” to use her “maiden name” in the practice of law.

B. Statutes, court rules, and judicial guidelines

6. Compliance with the Rules of Professional Conduct that we have cited above, however, may not be sufficient. The attorney should also abide by any statutes, court rules, and judicial guidelines that govern an attorney in these circumstances. For example, Judiciary Law § 468 (“Official registration of attorneys to be kept by the chief administrator of the courts”) requires the Chief Administrator of the Courts to maintain an official register of attorneys and counselors-at-law in the state of New York. Likewise, in Part 118 of the Rules of the Chief Administrator of the Courts (“Registration of Attorneys”), a provision at 22 NYCRR § 118.1(e) requires that attorneys periodically file registration statements on a form provided by the Chief Administrator of the Courts, which must include, among other things, the name of the attorney. If the information on file changes, 22 NYCRR § 118.1(f) requires that “the attorney shall file an amended statement within 30 days of such change.”

7. Furthermore, each of the four judicial departments within the Appellate Division maintains a Roll of Attorneys and Counselors-at-Law in the respective office of the Clerk of the Court. The Second Department’s website, under “Attorney Matters/Change of Name/Introduction” notes the following:

The name under which an attorney is authorized to practice law is the name under which he or she was admitted to practice and which is recorded in the Roll of Attorneys and Counselors-at-Law maintained in the office of the Clerk of the Court. An attorney may not begin to practice under a different

name without the prior approval of an application to do so by the Appellate Division in the Department in which he or she was admitted. Such a change may, under limited circumstances defined by law, be made administratively by the Clerk of the Court. All others require an application to the court for an order authorizing the change.

http://www.nycourts.gov/courts/ad2/attorney_matters_NameChangeApplications.shtml.

The other three judicial departments have adopted similar procedures. See <http://www.courts.state.ny.us/courts/ad1/Committees&Programs/CFC/index.shtml#NameChange> (1st Dep't); <http://www.courts.state.ny.us/ad3/Admissions/AttorneyNameChange.pdf> (3rd Dep't); <http://www.nycourts.gov/courts/ad4/Clerk/AttyMtrrs/baradmin.html#Name> (4th Dep't).

8. The Second Department's guidelines on "Name Change Applications" note that "[t]here are often reasons to seek a change of the name under which an attorney is authorized to practice law that do not fall within the statutes permitting such a change to be made administratively and thus require the change to be made by court order." Specifically listed among the situations requiring a court order are cases in which an attorney "wishes to practice under the familiar form of the given names under which he or she was admitted to practice, such as 'Jimmy Carter' rather than 'James Earl Carter.'"

9. The scope, interpretation, and application of the cited statutes, rules and guidelines present questions of law beyond the jurisdiction of this Committee. Our jurisdiction is limited to interpreting the New York Rules of Professional Conduct. We note, however, that the inquiring attorney must comply with all applicable statutes and court rules. Assuming the use of the English translation of the attorney's first name comports with these requirements, the inquirer's proposed use of that name is not unethical under the Rules.

CONCLUSION

10. For purposes of business cards, informal communications, and a law firm website, an attorney may, under the New York Rules of Professional Conduct, use a different first name from the one the attorney listed on the Roll of Attorneys as long as the name used is not misleading as to the attorney's identity. The attorney must, however, comply with any applicable statutes, rules or guidelines governing attorney registration and name changes.