



## New York State Bar Association Committee on Professional Ethics

Opinion 931 (9/7/12)

**Topic:** Law firm names

**Digest:** Law firm of solo practitioner cannot include “and Associates” based on employment of paralegal

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

### FACTS

[1] A solo practitioner employs a paralegal. He would like to name his firm “Smith [assumed name] and Associates” because he feels it would give a more positive impression of his firm’s capabilities, but seeks assurance that such name complies with professional ethics.

### QUESTION

[2] Would the law firm name “Smith and Associates” comply with the Rules of Professional Conduct where “Smith” is a solo practitioner, and Smith’s law firm also employs a paralegal?

### OPINION

[3] Rule 7.5(b) provides 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 . . .”

[4] Rule 7.5(b) also provides that “A lawyer or law firm may not include the name of a nonlawyer in its firm name.”

[5] Rule 7.5 (c) provides that “Lawyers shall not hold themselves out as having a partnership with one or more other lawyers unless they are in fact partners.”

[6] Comment 1 to Rule 7.5 states that “to avoid the possibility of misleading persons with whom a lawyer deals, a lawyer should be scrupulous in the representation of professional status.”

[7] Rule 8.4(c) provides that “A lawyer or law firm shall not . . . (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

[8] The inquirer asks whether he ethically can use the name “Smith and Associates” as the name of his law firm name where he does not have any partners and employs no other lawyers, and the “and Associates” aspect of the proposed name is based on the presence of a paralegal employed by the firm. Thus he asks whether the term “Associates” properly can refer to a paralegal.

[9] N.Y. State 869 (2011), which dealt in part with whether a solo practitioner could practice under a name containing the word “Firm,” notes that law firm names are subject to more stringent requirements than general lawyer advertising, and that a law firm may not practice under a trade name or any other name that is misleading. The opinion explains that this requirement “serves to protect the public from being deceived as to the identity, responsibility or status of those who use the firm name.”

[10] Use of the words “and Associates” does not comply with Rule 7.5(b) where the firm only has one lawyer. In that context, the term “and Associates” could only refer to a paralegal or other nonlawyer, since Smith is the only lawyer and Smith’s firm employs a paralegal. The firm name “Smith and Associates” would give the false impression to the public, including potential clients, that Smith is practicing with other lawyer colleagues. This is particularly true where “associate” has a long-established meaning in the context of lawyers in private practice, as a lawyer admitted to practice and employed by the law firm, but is not a partner.

[11] On the present facts, the term “and Associates” is misleading, and violates Rule 8.4(c). Based on its literal meaning, it can deceive the public because it suggests that the firm includes at least three lawyers: Smith and two others.

[12] N.Y. State 732 (2000) authorizes the use of the word “group” in a law firm name using the name of a particular lawyer where that lawyer practices with other associates (presumably lawyers). Its reasoning assumes that a name suggesting that the firm’s practice includes other associates is not misleading. By negative inference, using “and associates” in a law firm name where the firm consists of only one lawyer would be misleading.

[13] N.Y. State 286 (1973), similarly allows the use of the firm name “and associates” in a situation where “the associates” unquestionably refers to lawyers.

[14] Rule 7.5(c) also supports the negative answer to the inquiry because of its blanket prohibition against lawyers creating the impression that they are partners where that is not correct.

## **CONCLUSION**

[15] A solo practitioner whose law firm employs no other lawyers, but does employ a paralegal, may not ethically use the name “Smith and Associates” because that would risk misleading the public as to the number of lawyers at the firm.