



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

Opinion 1023 (9/26/14))

**Topic:** Firm Name; Trade Name; Disciplinary Authority; Choice of Law

**Digest:** A lawyer admitted only in New York, which prohibits a lawyer from practicing under a trade name, may not be of counsel to an out-of-state firm with a trade name.

**Rules:** 7.5(b), 8.5(a), 8.5(b)

**FACTS**

1. The inquirer (Y) is a New York licensed attorney who has a full time job and wants to be of counsel to a District of Columbia law firm that a colleague (X) is forming. X is a member of the District of Columbia bar, and Y is a member of only the New York State bar. X has been informed that the firm name could not be "X and Y," since that would imply that Y was a partner and therefore would be misleading. *See* Rule 7.5(c) ("Lawyers shall not hold themselves out as having a partnership with one or more other lawyers unless they are in fact partners.") X has proposed using a trade name, based on the kind of law the firm would practice, which the District of Columbia permits and New York State does not. The firm would disclose that the inquirer is a member of only the New York State bar.

**QUESTION**

2. May an attorney admitted only to the New York State bar be of counsel to a District of Columbia law firm that practices under a trade name?

**OPINION**

3. The law firm involved in this inquiry is a District of Columbia entity. Although many aspects of the practice of the D.C. firm will be governed by the D.C. Rules of Professional Conduct, to determine whether Y may become of counsel to<sup>1</sup> and practice with the firm, certain

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<sup>1</sup> Although Y proposes to become "of counsel" to the firm, the principles set forth in this opinion would also apply to a lawyer admitted only in New York who wished to become an associate or partner in an out-of-state firm practicing under a trade name.

aspects of Y's practice will be governed by the New York Rules of Professional Conduct (the "Rules").

4. The question of which jurisdiction's ethics rules are to be applied to particular circumstances is governed by Rule 8.5 ("Disciplinary Authority and Choice of Law"), which reads as follows:

(a) A lawyer admitted to practice in this state is subject to the disciplinary authority of this state, regardless of where the lawyer's conduct occurs. A lawyer may be subject to the disciplinary authority of both this state and another jurisdiction where the lawyer is admitted for the same conduct.

(b) In any exercise of the disciplinary authority of this state, the rules of professional conduct to be applied shall be as follows:

(1) For conduct in connection with a proceeding in a court before which a lawyer has been admitted to practice (either generally or for purposes of that proceeding), the rules to be applied shall be the rules of the jurisdiction in which the court sits, unless the rules of the court provide otherwise; and

(2) for any other conduct: (i) if the lawyer is licensed to practice only in this state, the rules to be applied shall be the rules of this state, and (ii) if the lawyer is licensed to practice in this state and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

5. Under Rule 8.5(b)(2), since Y is licensed to practice only in New York, the New York Rules will apply to his conduct.

6. Rule 7.5(b) prohibits an attorney in private practice from practicing under a trade name. Specifically, Rule 7.5(b) states 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, except that by the name of a professional corporation shall contain "PC" or such symbols permitted by law, the name of a limited liability company or partnership shall contain "LLC," "LLP" or such symbols permitted by law and, 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.

7. In N.Y. State 740 (2001), the Committee concluded that “using a name that is not the legal name of one or more partners or former partners in the law firm constitutes use of a trade name.”

8. In N.Y. State 861 (2011), the committee held that, although the New York office of a law firm may not ethically operate under a trade name, a lawyer who is admitted in New York and another jurisdiction that permits a law firm to practice under a trade name, and who principally practices in the other jurisdiction, may be of counsel to a firm with a trade name, even though the lawyer could not do so in New York. In reaching its conclusion, the committee analyzed Rule 8.5(b)(2)(ii) and concluded that “[b]ecause the conduct – practicing with a firm that uses a trade name – principally occurred in the other jurisdiction, the applicable ethical rules would be those of the other jurisdiction.” *See also* N.Y. State 889 (2011) (a lawyer admitted in New York and D.C. who principally practices in D.C., which allows partnership with a non-lawyer, may conduct New York litigation even if the D.C. partnership includes a non-lawyer who would benefit from the resulting fees, because the governing ethical provisions would be those of D.C.).

9. The analysis of N.Y. State 861, however, does not apply to the instant inquiry, because the inquiring attorney -- Y -- is only admitted to the New York State Bar and is not admitted in D.C. (the other jurisdiction involved here), and is therefore not authorized to "principally practice" in the jurisdiction that allows lawyers to practice under a trade name.

## CONCLUSION

10. A lawyer admitted solely in New York, where lawyers are prohibited from practicing under trade names, may not be of counsel to an out-of-state firm that is practicing under a trade name.

(30-14)