



# NEW YORK STATE BAR ASSOCIATION

One Elk Street, Albany, New York 12207 □ PH 518.463.3200 □ [www.nysba.org](http://www.nysba.org)

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## New York State Bar Association Committee on Professional Ethics

Opinion 1075 (12/1/15)

**Topic:** Firm Name; Trade Name

**Digest:** A business formed by a retired judge to help lawyers prepare arguments for court may not use a trade name.

**Rules:** Rules 1.6, 1.7, 7.5(b)

### FACTS

1. Inquirer is a retired judge beginning a new business venture that provides legal consulting services to lawyers preparing arguments for court or other proceedings. Inquirer plans to use her experience to critique and hone a lawyer's presentation prior to his or her appearance in court. She would like to use a trade name for her business.

### QUESTION

2. Do the New York Rules of Professional Conduct (the "Rules") forbid the use of a trade name by a former judge who is beginning a business that will help lawyers prepare their arguments for court or other proceedings?

### OPINION

3. Rule 7.5(b), which is part of the advertising rules, states:

A lawyer in private practice shall not practice under a trade name . . . or a firm name containing names other than those of one or more of the lawyers in the firm.

4. As we commented in N.Y. State 869 (2011), "The prohibition against trade names is broad, permitting use of little beyond the names of lawyers presently or previously associated with the firm." *See In re Shephard*, 459 N.Y.S.2d 632, 633 (3<sup>rd</sup> Dep't 1983) (finding "The People's Law Firm" was a prohibited trade name). Cf. *In re von Wiegen*, 63 N.Y.2d 163; 470 N.E.2d 838, 481 N.Y.S.2d 40 (Ct. App. 1984), cert. denied, 105 S.Ct. 2701 (1985) (use of phrase "the Country Lawyer" immediately below the lawyer's name constitutes a "motto," not a "trade name"); N.Y. State 948 (2012) (firm name may not include the phrase "The Business Dispute Clinic," but use of the phrase as a motto separate from the firm name may be permissible); N.Y. State 869 (2011) (lawyer's advertising may disclose an area of law in which the lawyer practices, such as tax, but lawyer may not include an area of law in the law firm name).

5. The term “private practice” used in 7.5(b) refers to the “practice of law.” The scope of what constitutes the “practice of law” – for example in connection with the unauthorized practice of law – is a legal question, which this Committee is not authorized to answer. *See* N.Y. State 636 (1992) (business of selling standard will forms is not practice of law unless the forms are individualized). Nonetheless, we are comfortable assuming that the business of advising lawyers how to best prepare for arguments in court in specific cases is the practice of law. *See, e.g.*, N.Y. State 636 (noting, under analogous provision of prior Code of Professional Responsibility, that when a lawyer holding himself out as such performs services or activities that a lawyer might provide to or conduct on behalf of a client, the lawyer will be held to all professional standards).

6. The application of all professional standards to the practice of law means that the inquirer could not advise both sides of a litigation on how best to prepare a specific argument for court without running afoul of Rule 1.7 (“Conflict of Interest; Current Clients”) and could not reveal confidences obtained while consulting with each side without running afoul of Rule 1.6 (“Confidentiality of Information”). As we assume that the inquirer’s proposed business model involves the practice of law, it is our opinion that she cannot use a trade name for that business.<sup>1</sup>

## **CONCLUSION**

7. The Rules forbid the use of a trade name by a former judge who is beginning a business that will help lawyers prepare their arguments for court or other proceedings.

(15-15)

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<sup>1</sup> We do not express an opinion about whether informal consultations between lawyers are likely to involve the practice of law. Cf. ABA 98-411 (concluding that when one lawyer consults with another lawyer and *where there is no intent to engage the consulted lawyer’s services*, no client-lawyer relationship arises and consulted lawyer will not necessarily be bound by Rule 1.6).