

# New York Lawyers Can Finally Use Trade Names: A Report on the Ethics of Trade Names

Report Prepared by the Advertising Subcommittee of the  
NYSBA Commercial & Federal Litigation Section's  
Social Media & New Communication Technologies Committee

Imagine two law firms fighting over the name of a deceased partner. That's just what happened in NY Ethics Op. 622 (1991). It addressed who "owned," for ethics purposes, the name of a deceased partner used by a 6-lawyer firm when the firm was dissolving and three partners wished to form one firm and the three other partners wanted to form a competing firm. Both new firms wanted to use the name of the deceased lawyer (alternative forms of branding were not permitted by the existing ethics rules). After exploring factors such as firm membership, clientele, practice areas and more, the opinion ultimately could *not* determine whether *either* firm could use the name but definitively held that the name could not be used by both firms. The opinion provided little clarity and presumably satisfied neither firm.

Thankfully, a recent change to New York's Rules of Professional Conduct (RPC) 7.5 helps New York attorneys avoid this legal branding scenario. The change to NY RPC 7.5 now allows New York lawyers in private practice to use trade names when naming their firms and developing an online presence.

## Updated RPC 7.5 Language

The full text of the updated NY RPC 7.5 is included at the end of this Report. An infographic of the updated Rule's highlights and principal changes is available [here](#).

In summary, the updated ethics rule removes the blanket ban on the use of "trade names" as long as such names are not false, deceptive, or misleading. In a world exploding with online marketing opportunities – such as on social media platforms, LinkedIn, web browser banners and in-site web ads, the opportunity for New York law firms to use trade names and enhance their branding will likely be seen as a positive by most attorneys and a welcome embrace of modern marketing techniques by the ethics rules.

The revised rule also deletes specific provisions regarding signage, business cards, announcements and related material (similar language now appears in the proposed commentary to the revised rule) and moves existing language into revised, clearer sections.

These changes are part of larger proposed changes to simplify New York's burdensome and complex advertising rules. Recent proposals to change New York's lawyer advertising rules, beyond trade names, reflect 2018 changes to the ABA's Model Rules of Professional Conduct that substantially simplified advertising rules. As of this writing, the larger changes to New York's lawyer advertising rules have not yet been adopted.

The new rules also apply to a lawyer's professional social media and online presence. This should allow much more flexibility in creating online brands, social media handles and a lawyer's overall online presence or advertising.

### Reasons for the Change

The change is undeniably impactful and the motivation behind it is interesting and complex. Until this revision, New York was apparently one of just nine of states that still prohibited trade names, presumably believing such names could be deceptive, while still carving out an exception for the use of the names of deceased or retired partners – which in the instance of a well-known, widely recognizable name could be akin – and as close as a New York firm could come – to a trade name.

One impetus for the change was likely the lawsuit that was filed in the Southern District of New York on January 23, 2020 by a Utah law firm, Law HQ, claiming that NY RPC limitations on trade names violated the First Amendment. Law HQ simultaneously also filed suit in Georgia, Indiana, Mississippi, Nebraska, New Jersey, Ohio Rhode Island and Texas, making similar claims because those jurisdictions likewise barred use of trade names. Following the Law HQ suit and with encouragement from NYSBA, a proposal to revise NY RPC 7.5 to allow for trade names was approved by the Appellate Divisions.

There were several other reasons why permissive use of trade names was on the horizon in New York.

- First, the change brings New York in line with other states that allow trade names, simplifying issues for firms that wish to use trade names in multiple states.
- Second, ethics opinions have long since recognized that using the name of a deceased partner was effectively the equivalent of a trade name. *See* NY Ethics Op. 622. Thus, the existing rule had some internal inconsistency.
- Third, there have been concerns that limits on trade names (as well as other limitations on attorney speech) may violate the First Amendment. *See Alexander v. Cahill*, 598 F. 3d 79 (2<sup>nd</sup> Cir. 2010) (Permitting a 30-day moratorium on attorneys' targeted solicitations to accident victims, but striking content-based restrictions on certain types of testimonials, portrayals, attention-getting techniques and trade names). *See also* NYSBA Report and Recommendation of Task Force on Lawyer Advertising, Bernice Leber, Chair (2005) (discussing Constitutional requirements for limitations on attorney advertising and related attorney advertising limits).
- Fourth, in an era when an individual can use a cell phone to order, customize, pay for and track the location for products from sandwiches to electronics and more, there may have been an implicit recognition that RPCs regarding advertising for legal services needed modernization.

## The Rule Change in Action

Although the Appellate Division does not publish comments to the RPCs, NYSBA commentary to the RPCs offers attorneys additional insights into the ethics rules. On June 13, 2020, NYSBA adopted revised comments to NY RPC 7.5. Both the revised rule and comments are available in the updated NY RPCs [here](#). The examples below also provide some practical guidance for practitioners.

Before selecting a trade name(s) the lawyer or firm should evaluate the kind of legal services provided. A New York firm could not call itself the “Family Law Boutique” if it did not have some type of focus on family law practice or if it was a large firm. *See Matter of Shephard*, 92 AD 2d 978 (3<sup>rd</sup> Dept. 1983) (Attorney censured; the use of the phrase “The People’s Law Firm of Jan L. Shephard, Attorney, P.C.” was deceptive because it implied public control of firm or low-cost or free legal services.) But a law firm that concentrates in family or matrimonial law could likely adopt such a trade name as the “Family Law Boutique” or “The Family Attorneys” and brand and market around those names. Care is warranted, as the level of ability, experience, or focus a lawyer or firm should possess when using a trade name implying superior knowledge or service is currently unclear.

Lawyers should also be aware of the intellectual property risks of trade names. For example, the “Law Tigers”, an association of motorcycle accident injury law firms, claimed an Illinois firm infringed on the Law Tigers’ trademark by using the nickname “TigerLaw”. See Lauren Berg, [Law Tigers’ Go After ‘TigerLaw’ In Law Firm TM Catfight](#), Law360 (Aug. 20, 2020) and Angie Jackson, [George Sink sues son George Sink Jr. for starting law firm with similar name](#), The Post and Courier (Aug. 12, 2019). In addition to filing a lawsuit, a competitor might also file an ethics complaint claiming the allegedly confusing trade name is deceptive or misleading.

Despite the new flexibility, practitioners may want to resist using online business name generators when adopting domain names or social handles. One such tool offered the following when consulted by this sub-committee:

- Pro Bono Consultancy
- Triumphus Legal Co.
- Convictus Group
- Lawish
- Laworzo

Although easily created and catchy, these names may present unforeseen challenges. For example, *Pro Bono Consultancy* may be seen as suggesting free legal assistance and *Triumphus Legal Co.* implying an ability to achieve superior results. Moreover, without effective branding, unconventional names such as *Convictus Group* and *Lawish* may create confusion regarding what services are to be provided (e.g. does Law“ish” mean services are unlike other attorneys or core services are provided by non-lawyers and “Group” implies more than one lawyer in a firm). Of course, the analysis is highly contextual – *Laworzo* may be acceptable if one’s practice were focused on law related to short-cut pasta shaped like a large grain of rice (i.e., orzo). As the boundaries of lawyer trade

names are not settled, and rebranding can be expensive and difficult, practitioners should give careful consideration to adopting a trade name.

One additional word of caution is advisable for New York lawyers. Unfortunately, the New York Rules of Professional Conduct available on the New York Courts website (link [here](#)) have *not* been updated since June 1, 2018. To find the revised NY RPC 7.5 discussed above, as well as other recent revisions, please see the page entitled “Joint Rules of the Departments of the Appellate Division (partial),” which can be found [here](#).

While these significant amendments to NY RPC 7.5 may be liberating to practitioners with creative sides or those eager to embrace cutting edge marketing tools, firms rebranding under the authority of this amendment should ensure that the trade name (and any associated website, domain name, or online presence) is not false, deceptive, or misleading.

#### Full Text of Amended Rule 7.5

##### “Professional Notices, Letterheads and Names”

(a) A lawyer or law firm may use internet websites, professional cards, professional announcement cards, office signs, letterheads or similar professional notices or devices, provided the same do not violate these Rules or any statute or court rule.

(b) (1) A lawyer in private practice shall not practice under:

(i) a false, deceptive, or misleading trade name;

(ii) a false, deceptive, or misleading domain name; or

(iii) a name that is misleading as to the identity of the lawyer or lawyers practicing under such name.

(2) Specific Guidance Regarding Law Firm Names.

(i) Such terms as “legal aid,” “legal service office,” “legal assistance office,” “defender office” and the like may be used only by bona fide legal assistance organizations.

(ii) A law firm name, trade name, or domain name may not include the terms “non-profit” or “not-for-profit” unless the law firm qualifies for those designations under applicable law.

(iii) A lawyer or law firm in private practice may not include the name of a nonlawyer in its firm name.

(iv) The name of a professional corporation shall contain “PC” or such symbols permitted by law.

(v) The name of a limited liability company or limited liability partnership shall contain “LLC,” “LLP” or such symbols permitted by law.

(vi) A lawyer or law firm may utilize a telephone number that contains a trade name, domain name, nickname, moniker, or motto that does not otherwise violate these Rules.

(3) A lawyer or law firm that has a contractual relationship with a nonlegal professional or nonlegal professional service firm pursuant to Rule 5.8 to provide legal and other professional services on a systematic and continuing basis may not include in its firm name the name of the nonlegal professional service firm or any individual nonlegal professional affiliated therewith.

(4) A lawyer who assumes a judicial, legislative or public executive or administrative post or office shall not permit the lawyer’s name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which the lawyer is not actively and regularly practicing law as a member of the firm and, during such period, other members of the firm shall not use the lawyer’s name in the firm name or in professional notices of the firm.

(c) Lawyers shall not hold themselves out as having a partnership with one or more other lawyers unless they are in fact partners.

(d) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.

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