



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

**Opinion 1217 (01/15/2021)**

**Topic:** Law firm name after a partner leaves

**Digest:** A law firm may continue to use the name of a former partner in the firm name where the partner leaves the firm for non-legal employment or becomes “Of Counsel” to the firm unless particular facts and circumstances would make it false, deceptive or misleading to use the former partner’s name.

**Rule:** 7.5(b)

**FACTS**

1. A named partner we shall call Baker, one of the founding partners of a law firm we shall call Able, Baker and Charlie, will be leaving the firm to work as a non-lawyer at a university. In the new position Baker will perform no legal services. However, Baker plans to consult on an ongoing basis with Able and Charlie regarding client matters Baker worked on while at the law firm. Baker will maintain a license to practice law in New York.

**QUESTIONS**

2. May a law firm continue to include the name of a former partner in the firm name if the former partner will maintain his law license but has left the firm to take a nonlegal position?
3. Would the result be different if the former partner becomes “Of Counsel” to the firm after leaving to take the nonlegal position?

**OPINION**

4. As amended effective June 24, 2020, Rule 7.5(b)(1) of the New York Rules of Professional Conduct (the “Rules”) provides:
  - (b) (1) A lawyer in private practice shall not practice under:
    - (i) a false, deceptive or misleading a 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.
5. Comment [2] to Rule 7.5 elaborates on Rule 7.5(b) by providing:

*A lawyer or law firm may not use any name that is false, deceptive, or misleading.* It is not false, deceptive, or misleading for a firm to be designated by the names of all or some of its current members or by the names of retired or deceased members where there has been a continuing line of succession in the firm’s identity. A lawyer or law firm may practice under a trade name or domain name if it is not false, deceptive, or misleading. A lawyer or law firm also may practice under a distinctive website address, social media username, or comparable professional designation, provided that the name is not false, deceptive, or misleading. [Emphasis added.]

6. In N.Y. State 1207 (2020) we addressed the implications of the Joint Order of the Appellate Divisions altering Rule 7.5(b), emphasizing that the revised Rule is intended to continue to protect the public from being deceived or misled as to the identity of lawyers using or practicing under a firm name. We concluded that under the revised Rule:

A law firm may practice in New York using a name that is not the name of any lawyer practicing in the firm—in other words, under a trade name—so long as the name under which the firm practices is not false, deceptive or misleading. A New York law firm may continue to include the name of a retired partner in its name.

N.Y. State 1207 ¶ 20.

7. Amended Rule 7.5(b) permits trade names — such as a firm located on “Maple Street” that wishes to practice under the trade name “Maple Street Law Group” — provided such trade names comport with what we described as “the longstanding principle that law firm names must not be false, misleading, or deceptive.” N.Y. State 1207 ¶11. Comments [3], [4] and [5] to Rule 7.5 provide examples of deceptive or misleading firm names, none of which suggest any concerns here.
8. There has never been a *per se* prohibition on keeping a former partner’s name in the firm name and nothing in amended Rule 7.5(b) prevents the firm of Able, Baker and Charlie from continuing to use Baker’s name in the firm name simply because Baker will continue working outside the firm as a non-lawyer. This is the result whether or not Baker becomes “Of Counsel” to the firm. The touchstone remains whether keeping Baker in the firm name would somehow be false, deceptive or misleading. On the facts presented to us, we have no basis to conclude that it would.

## CONCLUSION

9. A law firm may continue to use the name of a former partner in the firm name after the partner leaves the firm for nonlegal employment and/or becomes “Of Counsel” to the firm unless particular facts and circumstances would make it false, deceptive or misleading to do so.

(32-20)