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Committee on Professional Ethics

Opinion 869 (5/31/11)

Topic: Permissible law firm names.

Digest: A law firm may not include an area of law in the law firm name. A sole practitioner may use the terms "Firm" or "Law Firm" as part of the law firm name.

Rules: 7.1(a), 7.5(b).

QUESTIONS

1. A lawyer we will call John Smith would like to use a name such as "The Smith Tax Law Firm" for his practice, and he has asked two questions about the propriety of doing so.

A. May a firm name include an area of law in which the lawyer or law firm practices (such as "Tax" in this case)?

B. May a solo attorney practice under a name containing the word "Firm"?

OPINION

Question A: May Mr. Smith include the word "Tax" in the name of his firm to identify an area of his law practice?

2. Apart from the context of firm names, lawyers are generally permitted to identify their practice areas. Rule 7.4(a) of the New York Rules of Professional Conduct (the "Rules") provides: "A lawyer or law firm may publicly identify one or more areas of law in which the lawyer or law firm practices, or may state that the practice of the lawyer or law firm is limited to one or more areas of law ...."

3. Thus, a lawyer who complies with other relevant ethical rules (such as those prohibiting deception, regulating advertising, and restricting claims of specialization) could describe his firm as a "tax law firm" on a website or in other advertising apart from the law firm name. Under Rule 7.5 ("Professional Notices, Letterheads and Signs") a lawyer may state the nature of a legal practice, to the extent permitted under Rule 7.4 ("Identification of Practice and Specialty"), in the contexts of professional cards (Rule

7.5(a)(1)), professional announcement cards (Rule 7.5(a)(2)), office signs (Rule 7.5(a)(3)), and letterheads (Rule 7.5(a)(4)).

4. Law firm names, however, are subject to more stringent regulations than the regulations that govern advertising. With limited exceptions, a lawyer in private practice may 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...." Rule 7.5(b). This rule serves to protect the public from being deceived as to the identity, responsibility or status of those who use the firm name. *See* N.Y. State 732 (2000) (applying trade name prohibition in former Code of Professional Responsibility).

5. The prohibition against trade names is broad, permitting use of little beyond the names of lawyers presently or previously associated with the firm. As an indication of this breadth, other parts of Rule 7.5(b) create exceptions allowing a firm name to include the names of deceased or retired partners or requiring firms to add terms such as "PC," "LLC," or "LLP" only in specified circumstances, suggesting that absent those circumstances, such names or terms might create impermissible trade names.

6. Precedents from this Committee confirm the breadth of the trade name prohibition. In N.Y. State 740 (2001), we said: "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" within the meaning of the predecessor to Rule 7.5(b). In N.Y. State 445 (1976), we disapproved the firm name "Community Law Office." To support our decision, we cited former EC 2-11, which indicated that "a lawyer in private practice should practice only under his own name, the name of a lawyer employing him, a partnership name composed of one or more of the lawyers practicing in a partnership, or, if permitted by law, in the name of a professional legal corporation, which should be clearly designated as such."

7. This broad prohibition has been applied to disallow firm names adding even limited terms to the names of the lawyers in the firm. In one case, "The People's Law Firm of Jan L. Shephard, Attorney, P.C.," was disapproved by a court not only as a deceptive name but also as a prohibited trade name. *In re Shephard*, 92 A.D.2d 978, 979 (3d Dept. 1983). Indeed, N.Y. State 740, *supra,* found that an impermissible trade name would result merely from adding the letter "A" to the front of the names of lawyers associated with the firm. These precedents were decided under the Code of Professional Responsibility, but the prohibition of trade names in the Rules continues in the same terms, and we interpret it in the same way.

8. Another restriction on law firm names is that lawyers may not make deceptive or misleading statements, whether in advertisements or otherwise. *See* Rule 7.1(a)(1) (prohibiting "false, deceptive or misleading" statements in lawyer advertisements) and Rule 8.4(c) (prohibiting a lawyer or law firm from engaging in "conduct involving dishonesty, fraud, deceit or misrepresentation"). The phrase "Tax Law Firm" as part of a firm name may be literally true, but literal truths can nonetheless be misleading. We

are concerned that unsophisticated consumers could read "The Smith Tax Law Firm" as saying more than just that the firm practices tax law. The name would be misleading to the extent it suggests that there is a legal entity called a "tax law firm" – falsely implying an officially recognized subcategory of law firms that have more authority or more skill to practice tax law than do "ordinary" law firms.

9. We recognize that restrictions on a law firm's use of a trade name may raise constitutional issues. *Compare Friedman v. Rogers*, 440 U.S. 1 (1979) (upholding a Texas law prohibiting optometry trade names), *with Alexander v. Cahill*, 598 F.3d 79, 95 (2d Cir.), *cert. denied,* 131 S. Ct. 820 (2010) (distinguishing *Friedman* on its facts but also noting doubt as to *Friedman*'s continued validity). As of now, however, the courts have not struck down Rule 7.5(b). Nor was that provision challenged in *Alexander v. Cahill.* If the constitutionality of the prohibition on the use of trade names by private lawyers is someday litigated, one of the issues may be the potential for deception that we have mentioned above. Ultimately the courts may or may not see that potential as sufficient to justify the restriction, but the constitutionality of the prohibition on trade names is a question of law beyond our Committee's jurisdiction.

10. However, language that may be impermissible as a trade name may be permissible as a separate firm "motto." *See In re Von Wiegen*, 63 N.Y.2d 163, 176 (1984) (finding that "The County Lawyer," which appeared underneath the firm name on the firm's letterhead, was a permissible "motto" rather than an impermissible "trade name"); *see also* N.Y. State 636 (1992) ("We see nothing inherently misleading in the phrase 'The Will Store' and thus perceive no per se ethical proscription on the use of that phrase as a motto in conjunction with the name or names of one or more lawyer principals, but a trade name may not stand alone if the firm is comprised of lawyers and some of its activities, if carried on by lawyers, would constitute the practice of law").

Question B: May Mr. Smith use the name "The Smith Law Firm" even though he is the only lawyer in the firm?

11. Mr. Smith also asks whether he may use the name "The Smith Law Firm." We conclude that he may do so. Even though Mr. Smith is a sole practitioner, his use of the word "Firm" in the name of his practice would not violate Rule 7.5(b). Indeed, "The Smith Law Firm" would clearly and accurately identify the one lawyer practicing under that firm name. Use of the word "Firm" would not suggest that more than one lawyer is involved. *See* Rule 1.0(h) (defining "law firm" to include a "sole proprietorship").

CONCLUSION

12. Mr. Smith may not use the name "The Smith Tax Law Firm" because including a practice area in the firm name renders it an impermissible trade name and is misleading to the extent it implies that there is an officially recognized entity called a "tax law firm." He may, however, use the name "The Smith Law Firm" even though he is the only lawyer in the firm.