

Law Firm Names

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*What's in a name? [T]hat which we call a rose
[b]y any other word would smell as sweet.*

WILLIAM SHAKESPEARE, *ROMEO & JULIET*¹

Shakespeare's famous quote trivializing the significance of a name may ring true with romance and roses, but perhaps not with the practice of law—at least not in New York. In 2020 the New York Rules of Professional Conduct (“**RPC**”) were amended to allow lawyers and law firms to brand their practices with a trade name that has more pep than, say, Montague PLLC.

In quintessential lawyerly fashion, the text of the amended Rule 7.5 does not expressly permit the use of trade names, but rather prohibits their use if “false, deceptive or misleading.”² The term “trade name” is not defined by the RPC, but in this context a trade name is generally understood to mean “a name that does not include the name of any lawyer currently or formerly practicing in the firm.”³

The amended Rule 7.5 also prohibits the use of a domain name that is false, deceptive or misleading,⁴ as well as the use of any name that is misleading as to the identity of the lawyer or lawyers practicing under such name.⁵ Comment [2] to Rule 7.5 states “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.” Professor Roy Simon points out that “a law firm may continue using the name of a lawyer who is no longer with the firm only if the lawyer is dead or retired.”⁶

Rule 7.5(b)(2) contains additional restrictions and guidance on law firm names, including a prohibition on the inclusion of the name of a nonlawyer.⁷

Rule 7.5(c) prohibits lawyers from holding themselves out as having a partnership with one or more other lawyers unless they are in fact partners. Comment [5] to Rule 7.5 construes this restriction broadly, stating “lawyers may not imply or hold themselves out as practicing together as one ‘firm’ as defined in Rule 1.0(h), because to do so would be false and misleading.” Since the definition of “firm” or “law firm” in Rule 1.0(h) is as broad as the proverbial kitchen sink, Rule 7.5(c) should be interpreted to apply not just to general partnerships, but also to

¹ The Yale Shakespeare, *The Complete Works*, Editors Wilbur L. Cross and Tucker Brooke, Copyright 1923 The Yale University Press, *The Tragedy of Romeo and Juliet*, at 911.

² See [22 NYCRR 1200.0 Rule 7.5\(b\)\(1\)\(i\)](#). Comment [2] to Rule 7.5 does, however, expressly provide that “[a] lawyer or law firm may practice under a trade name or domain name if it is not false, deceptive or misleading.”

³ See New York State Bar Association (“**NYSBA**”) Ethics Opinion 1207 (November 11, 2020).

⁴ See Rule 7.5(b)(1)(ii).

⁵ See Rule 7.5(b)(1)(iii).

⁶ See Simon’s New York Rules of Professional Conduct Annotated § 7.5:11 (citing [Mendelsohn v. Equitable Life Assur. Soc.](#), 33 N.Y.S2d 733 (App. Term 1942)).

⁷ See Rule 7.5(b)(2)(iii).

professional service corporations, professional service limited liability companies and limited liability partnerships.

On the topic of business entities, there are intuitive requirements in Rule 7.5(b)(iv) and (v) that essentially mirror the related business statutory provisions regarding the abbreviated suffixes of PC, LLC and LLP “or such symbols as are permitted by law”.⁸ Clause (iii) of Comment [7] to Rule 7.5 reiterates these requirements, stating the purpose is “[t]o alert clients, the public, and those who deal with a lawyer or law firm about possible limitations on liability.”

For lawyers practicing through a business entity, in addition to the RPC requirements, the names must comply with the applicable statutory requirements for the specific entity.⁹ This goes beyond the issue of abbreviated suffixes. Certain words and phrases are prohibited, and others are not permitted unless the permission of a state agency is attached to the applicable formation document.¹⁰ These requirements also apply to any assumed name the business entity elects to use (more on assumed names below).¹¹

Rule 7.5(b) allows a law firm with lawyers admitted in jurisdictions other than New York to use the same name in all jurisdictions so long as the law firm’s letterhead and other public listings make the jurisdictional limitations clear for the lawyers who are not licensed in all listed jurisdictions.¹²

The summary above is for reference purposes only. Any lawyer or law firm exploring the use of a particular name should carefully review the full text of the amended Rule 7.5, as well as the official comments thereto. NYSBA [Ethics Opinion 1207](#) (November 11, 2020) is a highly recommended secondary resource. As with anything else related to the RPC, Professor Roy Simon’s commentary on the amended Rule 7.5 in the New York Rules of Professional Conduct Annotated is also an extremely helpful resource for guidance on this topic. Professor Simon sums it up best by stating “every law firm name should be evaluated on a case-by-case basis to ensure that a firm name does not mislead or deceive the public.”¹³

⁸ Pursuant to Section 1512(b) of the New York Business Corporation Law, “[t]he name of a professional service corporation shall end with the words “Professional Corporation” or the abbreviation “P.C.”). Pursuant to Section 1212(b) of the New York Limited Liability Company Law, “[a] professional service limited liability company name shall end with the words ‘Professional Limited Liability Company’ or ‘Limited Liability Company’ or the abbreviation ‘P.L.L.C.’, ‘PLLC’, ‘L.L.C.’, or ‘LLC’. Under Section 121-1501 of the New York Partnership Law, “[t]he name of each registered limited liability partnership shall contain without abbreviation the words “Registered Limited Liability Partnership” or the abbreviations ‘R.L.L.P.’, ‘RLLP’, ‘L.L.P.’ or ‘LLP’; provided, however, the partnership may use any such words or abbreviation, without limitation, in addition to its registered name.”

⁹ See §§ 204 and 1212 of the New York Limited Liability Company Law and §§ 301, 302 and 1512 of the New York Business Corporation Law.

¹⁰ *Id.*

¹¹ See Section 130(2)(c) of the New York General Business Law (the “GBL”).

¹² See Rule 7.5 Comment [8] (“A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but all enumerations of the lawyers listed on the firm’s letterhead and in other permissible listings should make clear the jurisdictional limitations on those members, counsel, and associates of the firm not licensed to practice in all listed jurisdictions.”)

¹³ See Simon’s New York Rules of Professional Conduct Annotated § 7.5:11.

The use of a trade name may also trigger the application of [Section 130](#) of the GBL. Under GBL §130, transacting business under a name other than the “real name” of the applicable business generally requires the filing of an assumed name certificate.¹⁴ While attorneys practicing as a general partnership are excepted from GBL §130,¹⁵ the statute applies to any individual, corporation or limited liability company.¹⁶ As a result, a lawyer practicing under a trade name as a sole proprietor (*i.e.*, without a business entity) should file an assumed name certificate with the clerk of each county where the lawyer practices.¹⁷ Similarly, a lawyer or lawyers practicing under a trade name as a professional service corporation (PC) or a professional service limited liability company (PLLC) should file an assumed name certificate *if the trade name is different from the official name in the applicable formation filing* (*i.e.*, the business entity’s “real name”).¹⁸ Such filing is not required if the trade name is “used in conjunction with the real name” of the business entity.¹⁹ If applicable, the assumed name certificate of a PC or PLLC gets filed with the secretary of state, not at the county level. It is not clear whether and to what extent GBL §130 applies to lawyers practicing through a limited liability partnership (LLP). On the one hand, an LLP is technically a general partnership that registers as an LLP and, as mentioned above, general partnerships practicing law are excepted from GBL §130. On the other hand, the registration of an LLP is very similar to the formation of a PLLC in that the secretary of state is designated as agent for service of process and there is a dreaded publication requirement.²⁰ Rather than assume GBL §130 is inapplicable on the grounds that an LLP is technically a general partnership, the less-risky approach would be to apply the principles of GBL §130 as if the LLP were a PC or PLLC, especially considering one court’s articulation of the statutory purpose: “[affording] the public information as to the identities of the persons conducting the business, [and] to prevent deception and confusion.”²¹ In other words, if a trade name is used by an LLP that is different than the name of the LLP in its registration filing, then, unless such use is “in conjunction with” the registered name of the LLP, an assumed name certificate should be filed with the secretary of state.

A knowing violation of GBL §130 or a knowing false statement in an assumed name certificate filed pursuant thereto is a misdemeanor.²² Noncompliance with GBL §130 can also result in an indirect ethical violation. Rule 7.5(a) permits lawyers and law firms to use internet web sites, professional cards, letterheads etc. “provided the same do not violate [the RPC] or any

¹⁴ See GBL §130(1)(i).

¹⁵ See GBL §130(7).

¹⁶ See GBL §130(1-a)(a).

¹⁷ See GBL §130(a).

¹⁸ See GBL §130(b). For a PC, this would be the name in the Certificate of Incorporation. For a PLLC, this would be the name in the Certificate of Formation.

¹⁹ See, *e.g.*, NYSBA Ethics Opinion 1235 (opining, based on the facts presented, that two distinct assumed names used by a law firm to brand separate practice areas were not false, deceptive or misleading where the firm represented that it would disclose its full name wherever the assumed names would be posted or published).

²⁰ See Section 121-1500 of the New York Partnership Law.

²¹ See *Parks v. Steinbrenner*, 115 AD2d 395, (1st Dep’t 1985) (citing *Reed v. Pelley*, 112 Misc.2d 282 (Supt Ct. 1982).

²² See GBL § 130(9).

statute or court rule.”²³ A lawyer’s or law firm’s use of a trade name through any of the foregoing methods in contravention of GBL §130 would therefore double as a violation of Rule 7.5(a) because it would be a violation of a statute. Lastly, there is also a risk that a violation of GBL §130 could fuel a claim alleging deceptive trade practices under GBL §349.²⁴

One last point on the use of trade names. As with any business, there is a risk that the use of a particular name might infringe upon the intellectual property rights of a third party. Before spending time and incurring expenses to use a particular trade name, lawyers would be wise to have a robust trademark search done to manage that risk. An allegation of infringement can be costly to defend and may ultimately require abandoning the use of the preferred trade name which, depending upon the timing, could be messy and expensive.

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²³ See Rule 7.5(a). *Italics added.*

²⁴ See GBL §§ 349(b) & (h).