

New York State Bar Association
Committee on Professional Ethics

Opinion 1030 (10/30/14)

Topic: Trust Account; Letterhead

Digest: If a law firm with a new name partner is either the same firm (with a new name) or a legal successor to the business and property of the original firm, and the firm (i) makes all necessary corporate filings, and (ii) takes all steps with the bank that maintains its trust account necessary to reflect any changes taking place under the Business Corporation Law and the firm's constituent documents, then the firm may (1) continue to use its old letterhead while the remaining stock is being depleted and (2) continue to use the trust account and the checks used to draw upon it (although it would be desirable to indicate the change in firm name on the old checks).

Rules: Rules 1.15(b), 7.5(b), 8.4(c).

FACTS

1. A lawyer (Z) recently joined a law firm known as W, X & Y, P.C. as a partner. The firm would like to change the firm's name to add attorney Z's name to the firm's name to create the law firm of W, X, Y & Z, P.C.

QUESTIONS

2. A. Must the law firm discard all existing letterhead/stationery in the original name of the firm, or may it continue to use the old stationery, until it runs out?

B. May the law firm continue to use the original firm's checking account and checks until the checks run out, or must the firm open a new checking account in the new name?

OPINION

3. The answer to the questions posed here depend on both applicable law and the applicable provisions of the New York Rules of Professional Conduct (the "Rules"). The questions about applicable law -- whether the firm has merely changed its name, or is considered a completely new law firm, and, if the firm is a new corporate entity, whether it has succeeded to all of the rights and liabilities of the original firm, including its business and bank accounts -- are legal questions beyond our jurisdiction to answer, but, in the Committee's experience, it is common, when a professional corporation adds a name partner, to amend its certificate of incorporation to change its name. In this case, the firm is the same firm.¹

Use of Old Letterhead

4. Rule 7.5 sets out the ethical rules with respect to professional notices, letterheads and signs. It provides generally that a lawyer or law firm may use letterheads, professional cards and similar professional notices, as long as they do not violate any statute or court rule and are not false, deceptive or misleading. In addition, Rule 7.5(b) provides, among other things, that "[a] lawyer in private practice shall not practice under . . . a name that is misleading as to the identity of the lawyer or lawyers practicing under such name." Rule 8.4(c) prohibits an attorney from engaging in "conduct involving dishonesty, fraud, deceit or misrepresentation."

5. It is common for law firms to add partners from time to time, and also common for law firm names not to include the name of all partners in the firm. Consequently, assuming that W, X, Y & Z is either the same firm or a legal successor to W, X & Y, and that all necessary public filings have

been made, we do not believe use of the old letterhead would be misleading while the remaining stock is being depleted merely because it does not reflect the new name of the firm.²

Use of Original Bank Account

6. Rule 1.15(b)(1) provides in relevant part:

A lawyer who is in possession of funds belong to another person incident to the lawyer's practice of law shall maintain such funds in a banking institution within New York State. . . . Such funds shall be maintained, in the lawyer's own name, or in the name of a firm of lawyers of which the lawyer is a member, or . . . is employed

The Rule does not apply to the firm's general (i.e. operating) account, that is, the account that contains only funds that belong to the lawyer or law firm, such as funds that will be used to pay salaries or rent. Rather, Rule 1.15(b)(1) applies only to the attorney trust or escrow account containing client funds. With respect to the firm's general account, Rule 8.4(c), quoted in ¶4, above, would be the applicable provision.

7. We believe that whether an attorney trust account in the original firm name is an account in the name of a firm of lawyers of which the lawyer is a member depends on the legal issue of whether the new firm is the same as, or a legal successor to, W, X & Y, so that the original trust account remains or becomes the trust account of the successor firm. If the trust or escrow account is or becomes the property of the successor firm, and the firm takes the steps necessary with the bank to reflect the changes taking place under the Business Corporation Law and the firm's constituent documents, then we believe that the firm may ethically continue to use the trust or escrow account and the checks used to draw on that account without violating Rule 1.15(b)(1), although it would be desirable to indicate the change in firm name on the old checks.

8. Similarly, if the firm with the new name partner is the same as or a successor to the original firm, and the firm takes the steps necessary with the bank to reflect the changes taking place under the Business Corporation Law and the firm's constituent documents, then the firm may ethically continue to use the general account and the checks associated with that account without violating Rule 8.4(c), while the old checks are being depleted, although it would be desirable to indicate the change in firm name on the old checks.

CONCLUSION

9. If a law firm with a new name partner is either the same firm (with a new name) or a legal successor to the business and property of the original firm, and if the firm (i) makes all necessary corporate filings, and (ii) takes all steps with the bank that maintains its trust or escrow account and its general account necessary to reflect any changes taking place under the Business Corporation Law and the firm's constituent documents, then the firm may (1) continue to use its old letterhead while the remaining stock is being depleted and (2) continue to use the trust account and general account and the checks used to draw on them (although it would be desirable to indicate the change in firm name on the old checks).

(36-14)

¹ New York Professional Corporations are formed under Article 15 of the Business Corporation Law. P.C.'s, like other corporations, are entitled to amend their certificates of incorporation to change their corporate names. See N.Y. Bus. Corp. L. § 801(b)(1).

² We might not reach the same conclusion with respect to a firm that has lost a name partner due to retirement or other departures, depending on the context.

