

New York State Bar Association
Committee on Professional Ethics

Opinion 1138 (11/8/17)

Topic: Use of English language translation of lawyer's surname in law firm name.

Digest: A lawyer who is engaged in a solo practice and admitted to practice under the lawyer's given surname may not use an English language translation of that name in the name of the lawyer's law firm.

Rules: 7.5(b), 8.4(c)

FACTS

1. The inquirer is a solo practitioner whose legal surname is the name that appears as the lawyer's name on the official roll of attorneys that the Clerk of the Court of the Appellate Division maintains. That name, is, on the inquirer's view, unduly alien to the ears and eyes of the English-speaking public whom the inquirer seeks to attract as clients. The inquirer wants to adopt an English language translation of this surname as the name of the lawyer's firm, while also identifying the lawyer, using the lawyer's real name, as an attorney "with" the firm. As a hypothetical example, if the inquirer appears on the official roll of attorneys as "Yohan Schmidt," and the English language translation of that name is John Smith, then the inquirer proposes to identify the firm as follows: "The Smith Law Office with Attorney Yohan Schmidt."

QUESTION

2. May an attorney substitute an English language translation of the lawyer's surname in the name of the lawyer's firm when the lawyer is admitted to practice and listed on the roll of attorneys under the lawyer's actual surname?

OPINION

3. Rule 7.5(b) of the New York Rules of Professional Conduct (the "Rules") provides in pertinent part that a "lawyer in private practice shall 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 firm name containing names other than those of one or more of the lawyers in the firm." This Rule serves to protect the public from being deceived about the identity, responsibility, or status of those who use the firm name. N.Y. State 732 (2000) (principal goal of predecessor of Rule 7.5(b) is to avoid misleading the public); Cmt. [1] to Rule 7.5 ("to avoid the possibility of misleading persons with whom a lawyer deals, a lawyer should be scrupulous in the representation of professional status. Lawyers should not hold themselves out as being partners or associates of a law firm if that is not the fact"); see Rule 8.4(c) (prohibiting conduct involving "deceit or misrepresentation").

4. In N.Y. State 740 (2001), this Committee concluded that "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 Rule 7.5(b). In N.Y. State 869 ¶ 7 (2011), we noted also that "the prohibition against tradenames is broad, permitting use of little beyond the names of lawyers presently or previously associated with the firm." In keeping with these opinions, this Committee has said that firm names may not include a variant on the lawyer's name created by conjoining the lawyer's initials with an abbreviation of the lawyer's surname because the proposed firm name deviated substantially from the lawyer's actual name and was therefore impermissible. N.Y. State 948 ¶ 4 (2012) (a lawyer may not use AbDoe Law as the firm name for a lawyer enrolled as Ann-Bonnie Doe).

5. N.Y. State 948 nevertheless recognized that some variations on names may deviate so slightly from the original as not to offend Rule 7.5(b). Thus, in N.Y. State 1003 ¶ 9 (2014), we concluded that a lawyer who practiced under the lawyer's full name may use a law firm name that includes only the lawyer's middle initials and last name, without including the lawyer's first name, provided that the proposed firm name does not violate the additional prohibition contained in Rule 7.5(b) against practicing under a firm name that is "misleading as to the identity of the lawyer or lawyers practicing under such name." Likewise, in, N.Y. State 872 ¶ 9 (2011), we said that a lawyer may use the English language translation of the lawyer's surname on business cards, in informal communications, and on the lawyer's website, if doing so was not misleading and was compliant with other applicable statutes and court rules regarding attorney firm names and name changes.

6. Here we face a different issue – whether an English language translation of the inquirer's surname, even if juxtaposed to the inquirer's actual surname to identify the lawyer individually -- is a permissible proxy for the name of the law firm. We have little doubt that a law firm may in advertising accurately describe its lawyers, their names, and their areas of concentration in languages other than English. But these matters are not the issue here. The sole issue here is whether it is misleading for a law firm to use as its name an English language translation of the lawyer's actual surname, by which the lawyer is admitted to the bar and listed on the official roll of attorneys.

7. We conclude that the answer is yes. The English language translation of the inquirer's last name in the firm name is more than a slight deviation from the inquirer's actual surname. The English language translation of the surname has a greater possibility to mislead the public than simply translating a first name to English or dropping a lawyer's first name and using initials to identify the lawyer. In both N.Y. State 1003 and N.Y. State 872, the firm name used the lawyer's legal surname. The public could readily see that the lawyer had the same name as the firm. Here, because the proposed firm name is different than the lawyer's legal last name under which the inquirer practices, it is far more likely to mislead the public. This is particularly so when, as here, the inquirer proposes to juxtapose the firm name containing the English language translation of the inquirer's last name next to the inquirer's chosen firm name. This placement could deceive the public into believing that the lawyer is not the sole lawyer in the firm – for instance, that two different lawyers named Yohan Schmidt and John Smith practice there – or that it is not the lawyer's firm. Cf. N.Y. State 869 ¶ 13 (2011) (Rule 7.5(b) permitted a solo practitioner named John Smith to use the firm name "The Smith Law Firm" because the name would clearly and accurately identify the one lawyer named Mr. Smith practicing under the firm name). By contrast, the proposed use of a translated surname here would not clearly and accurately identify the one lawyer practicing under the firm name.

CONCLUSION

8. A lawyer who appears on the official roll of attorneys under the lawyer's given surname may not use a different name in the lawyer's firm name, even if the name is a reasonable English translation of the lawyer's actual surname.

(24-17)