

**Louisiana State Bar Association
Rules of Professional Conduct Committee**

PUBLIC Opinion 07-RPCC-012¹

April 3, 2007

Identification of a Law Practice - Fictitious or Trade Names; Multiple Business Identities

An identifying name used by a lawyer in connection with the practice of law, whether it is a conventional firm name or a fictitious or trade name, may be used if it otherwise complies with the Louisiana Rules of Professional Conduct and the same name is used consistently and exclusively by that lawyer on all communications concerning the practice of law. A lawyer may not use multiple business identities simultaneously in connection with the practice of law, regardless of whether those identities utilize a conventional firm name or include a fictitious or trade name.²

The Committee has considered the ethical issues raised when a lawyer wishes to use a fictitious or trade name to practice law and/or to practice simultaneously under two or more different business names. In considering these issues, the Committee believes Rule 7.5(a) of the Louisiana Rules of Professional Conduct to be the primary rule:

¹ The comments and opinions of the Committee—public or private—are not binding on any person or tribunal, including—but not limited to—the Office of Disciplinary Counsel and the Louisiana Attorney Disciplinary Board. Public opinions are those which the Committee has published—specifically designated thereon as “PUBLIC”—and may be cited. Private opinions are those that have not been published by the Committee—specifically designated thereon as “NOT FOR PUBLICATION”—and are intended to be advice for the originally-inquiring lawyer only and are not intended to be made available for public use or for citation. Neither the LSBA, the members of the Committee or its Ethics Counsel assume any legal liability or responsibility for the advice and opinions expressed in this process.

² By usage of the term "Multiple Business Identities" this opinion does not address the issue of a lawyer practicing with more than one law firm, which is a permitted practice. The term instead refers only to the use of multiple firm identities for the same firm or solo practitioner.

A lawyer shall not use a firm name, logo, letterhead, professional designation, trade name or trademark that violates the provisions of these rules. A lawyer or law firm shall not practice under a trade name that implies a connection with a government agency, public or charitable services organization or other professional association. A lawyer shall not use a trade or fictitious name unless the name is the law firm name that also appears on the lawyer's letterhead, business cards, office signs and fee contracts and appears with the lawyer's signature on pleadings and other legal documents.

The Supreme Court of Louisiana re-adopted this Rule in January 2004,³ with an effective date of March 1, 2004, as an expanded version of Rule 7.5 of the ABA Model Rules of Professional Conduct.⁴ The Rule was adopted to effectuate the purposes of Rule 7.1(a) of the Louisiana Rules of Professional Conduct:

³ While the language of this Rule was not changed, it was renumbered from “Rule 7.3” to “Rule 7.5” in order to more closely track and correspond to the numbering scheme employed within the ABA Model Rules of Professional Conduct. The former Rule, in turn, had actually been renumbered to “7.3” by an amendment of the Court in October 1993—interestingly, the same language was originally adopted by the Court on December 18, 1986, effective January 1, 1987, as “Rule 7.5”. At least numerically speaking, then, we have now come full circle.

⁴ ABA Model Rules of Professional Conduct, Rule 7.5:

Firm Names And Letterheads

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

A lawyer shall not make or permit to be made a false, misleading or deceptive communication about the lawyer, the lawyer's services or the services of the lawyer's firm...

Although it is understandable that in today's market, particularly with the current heavy reliance on advertising, a lawyer would wish to hold himself out as conversant in many different aspects of the practice of law, it is not permissible to do so if the marketing effort would mislead, deceive or confuse others.⁵ The issues that arise, although overlapping, are classically presented in two different ways—that is, in the context of a lawyer or law firm wishing to use a trade or fictitious name for the practice of law, and in the case of a lawyer or law firm attempting to utilize multiple business identities simultaneously for the practice of law.

I. Trade or Fictitious Names

A fictitious or trade name may be utilized in connection with the practice of law, rather than simply the lawyer's own name, so long as the lawyer or law firm does not violate Rules 7.1⁶ or 7.5⁷ of the Louisiana Rules of Professional Conduct. Implicated in this area, in addition to the Rules already cited, is Rule 7.4 of the Louisiana Rules of Professional Conduct, which states:

A lawyer shall not state or imply that the lawyer is certified, or is a specialist or an expert, in a particular area of law, unless such certification, specialization or expertise has been recognized or approved in accordance with the rules and procedures established by the Louisiana Board of Legal Specialization.

⁵ *Id.*, Rule 7.1(a).

⁶ I.e., the trade or fictitious name used by the lawyer or law firm should not otherwise be misleading or deceptive.

⁷ I.e., the trade or fictitious name used by the lawyer should not imply "...a connection with a government agency, public or charitable services organization or other professional association..."

Accordingly, if a lawyer wishes to communicate expertise, certification or specialization in a particular area of law, he may not do so unless the provisions of Rule 7.4 have been met and satisfied. Likewise, the fictitious or trade name must also meet the requirements of Rule 7.4 if the name states or implies to the public a particular certification, expertise or specialist qualification.⁸

However, the Committee believes that Rule 7.4, when read in conjunction with Rule 7.1(a), would not prohibit a lawyer or law firm from truthfully stating areas of law in which the lawyer does or does not practice, as long as the specific language used does not state or imply certification, specialization or expertise in contravention to the rules and procedures established by the Louisiana Board of Legal Specialization. For example, the Committee believes that Rule 7.4 would not prohibit a lawyer from truthfully stating simply that the lawyer has a “Practice limited to _____”, “Practice focused on _____” or “Practice concentrated in _____” (where specific area(s) of law are inserted in the blanks) or just truthfully listing specific areas of law practice as those actually practiced and/or preferred by the lawyer or law firm in question (for example, “Family Law”, “Personal Injury”, “Successions”, “_____”, etc., or perhaps “Now Accepting Cases in _____, _____ and _____”).

⁸ For example, if a lawyer or law firm chooses to advertise as the “Maritime Law Center”, it is perhaps debatable whether that would run contrary to the requirements of Rule 7.4, especially if there are no lawyers practicing there who hold some form of certification or specialty in the area of maritime law—given that the Louisiana Board of Legal Specialization does not currently certify a maritime law specialty in Louisiana. On the other hand, if a name such as “Maritime Law Specialists of Louisiana” or “Maritime Injury Legal Experts” would be utilized, then the mandate of Rule 7.4 would clearly require a recognized certification by the Louisiana Board of Legal Specialization in order to use such a name and, as none currently exists, use of such names would be prohibited.

As long as the specialization rules have been observed, a fictitious or trade name such as “Family Lawyers, LLC” or “Bankruptcy Associates, APLC”, etc., may be utilized. Fictitious or trade names that are less practice-specific, for example, “Your Louisiana Lawyer”, “Legal Eagles, LLC”, or similar forms of identification, would also certainly be acceptable under Rule 7.4.

Finally, it should be remembered that even a conventional firm name (e.g., “Smith, Jones and Thomas, A Professional Law Corporation”), while perhaps at least initially containing only the names of some or all of the lawyers who are actual, current members of the firm, would still technically be considered a trade or fictitious name for a business entity (i.e., the law firm), rather than the given legal name of any one individually-licensed lawyer. As such, even that form of trade or fictitious name should comply with the Rules. Obviously, under most reasonable circumstances, use of such a conventionally-acceptable trade or fictitious name would not be prohibited under the Rules. However, Rule 7.5 contains some additional proscriptions with respect to lawyers who practice in law firms and how they identify their law practices:

A. Names of Lawyers not Actively and Regularly Practicing with the Firm

Rule 7.5(c) states:

...The name of a lawyer holding a public office or formerly associated with a firm shall not be used in the name of a law firm, on its letterhead, or in any communication on its behalf during any substantial period in which the lawyer is not actively and regularly practicing with the firm...

Under Rule 7.5(c), a law firm should not use or continue to use a trade or fictitious name in connection with the practice of law—such as a conventional firm name—where that firm name contains the name of a lawyer holding a public office (for example, the name of an elected/appointed, sitting judge) or a lawyer who was formerly associated with the firm during

any substantial period in which the named lawyer is not actively and regularly practicing with the firm (for example, while the lawyer remains an elected, sitting judge or if a lawyer leaves/quits the firm and begins to practice actively elsewhere).

Additionally, Rule 7.5(d) contains a further limitation that “...*lawyers may state or imply that they practice in a partnership or other organization only when that is the fact...*”, effectively prohibiting the utilization of a trade or fictitious name in connection with the practice of law where that name states or implies the association or other professional affiliation of other lawyers (or even fictionalized members) in a law firm when that is not true. For example, a lawyer who might wish to practice law using the trade or fictitious name of “John Jones and Associates, LLC” would be prohibited from doing so if he were just a sole practitioner and actually had no other lawyers working with him as his “associates”. Likewise, Rule 7.5(d), when read in conjunction with Rule 7.5(c), would prohibit a firm from continuing to use as its law firm name a trade or fictitious name which includes the name or names of a lawyer or lawyers who have left or quit the firm to practice actively elsewhere and, as such, are no longer members of the firm.⁹

B. Names of Deceased or Retired Members of a Firm

While Rule 7.5(c) prohibits the use or continued use in a law firm name of the name of any lawyer formerly associated with a firm during any substantial period in which that lawyer is not actively and regularly practicing with the firm, Rule 7.5(e)¹⁰ recognizes that law firms sometimes continue to exist and survive for long periods of time, often beyond the working career or even

⁹ This would be distinguished from a scenario where lawyers continue to practice as the surviving members of a law firm whose name partners have now all died or permanently retired. Also, see Rule 7.5(e).

¹⁰ Louisiana Rules of Professional Conduct, Rule 7.5(e): “...*If otherwise lawful, a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm, or of a predecessor firm in a continuing line of succession...*”

the lifetime of individual firm members, and, as a result, this Rule creates an exception permitting the use or continued use of the name or names of one or more deceased or retired members of the firm (or of a predecessor firm in a continuing line of succession), if otherwise lawful. One should note that the distinction made between those two Rules lies with the fact that, under Rule 7.5(e), there is little to no chance that the lawyer who was formerly associated with the firm will return to active, regular law practice, either with this firm or otherwise, since the lawyer in question has retired from active practice or died. On the other hand, under Rule 7.5(c), the lawyer who was formerly associated with the firm might conceivably still return to practice with the firm at some future date or, alternatively, might choose to practice elsewhere and under some other, different business identity in connection with the practice of law¹¹ (hence the qualifying language in Rule 7.5(c): “...*during any substantial period in which the lawyer is not actively and regularly practicing with the firm...*”).

II. Multiple Business Identities

The issue of multiple business identities typically arises when a lawyer or law firm wishes to call attention to the lawyer’s or law firm’s willingness to accept employment in particular fields of practice. Perhaps in order to do so more purposefully, the lawyer or law firm might decide to forego using the lawyer’s own name or a conventional law firm name and, instead, utilize a trade or fictitious name that calls special attention to the lawyer’s affinity for that particular area of law practice (for example, “Bankruptcy Legal Eagles, LLC” or “Personal Injury Lawyers, Inc.”).

As indicated above, the trade or fictitious name chosen would need to comply with Rule 7.4, avoiding any statement or implication that the lawyer is certified, a specialist or expert in that

¹¹ For example, a partner of a law firm at some point opts to quit that firm and form another, new law firm or simply joins a different, totally unrelated firm or begins practicing as a solo practitioner.

particular area of law unless such certification, specialty or expertise has been recognized or approved in accordance with the rules and procedures established by the Louisiana Board of Legal Specialization. However, Rule 7.5(a) would also require that a fictitious or trade name used in connection with the practice of law would also be the name used consistently by the lawyer and/or law firm on all official communications, pleadings, letterhead, business cards, etc.¹² Therefore, the Committee believes that Rule 7.5(a) would not allow simultaneous use of multiple business identities by a lawyer or law firm in connection with the practice of law.

A lawyer or law firm—as well as any of its individual members, sections, practice groups, divisions, etc.—could not, for example, be known and identified on one hand as “Smith & Smith, Attorneys At Law” and also, at the same time, as the “Family Law Legal Depot, LLC ” for purposes of seeking and handling only family law matters. Likewise, a law firm could not have one lawyer practicing as “Bankruptcy Busters, Inc.”, in an attempt to build a bankruptcy-focused practice, and another firm lawyer practicing simultaneously as the “Family Law Legal Depot, LLC”, for purposes of trying to segregate all family law work that comes into the firm, while both lawyers are yet also still practicing under, affiliated with and identified along with other lawyers in the firm by the general, conventional (perhaps initial) firm name of “Smith & Smith, Attorneys At Law” (in and of itself a trade or fictitious name already utilized by these lawyers in connection with the practice of law). The Committee believes that Rule 7.5(a) requires the use of a single, consistent business identity in connection with the practice of law in order to avoid any confusion, risk of deception or risk of misleading others in any way in connection with the

¹² *Id.*, Rule 7.5 of the Louisiana Rules of Professional Conduct, in pertinent part: “...A lawyer shall not use a trade or fictitious name unless the name is the law firm name that also appears on the lawyer’s letterhead, business cards, office signs and fee contracts and appears with the lawyer’s signature on pleadings and other legal documents...”.

lawyer's dealings with the public, clients, potential clients, other lawyers, judges and the legal system in general.¹³

Accordingly, if a fictitious or trade name is adopted in connection with the practice of law, that fictitious or trade name must be used consistently and exclusively by the lawyer or law firm with respect to all information, communications, written representations and legal documentation concerning the law practice of that lawyer or law firm.¹⁴ For example, if a lawyer or law firm chooses to represent to the public that its business name for the practice of law is "Bankruptcy Busters, Inc.", then that name must be utilized exclusively and consistently by the lawyer or law firm on all of its law firm letterhead, business cards, office signs, fee contracts, legal pleadings and other practice-related documents, etc.

III. Other Considerations

A. Designation of Academic Degrees or Other Professional Qualifications

In a similar vein, the Committee also believes that there is no prohibition against a lawyer truthfully utilizing on his business card, letterhead or other professional communications an indication of any other professional qualifications actually attained and possessed by the lawyer, such as "M.D.", "Ph.D.", "CPA", etc.¹⁵ The Committee does not believe that this falls within

¹³ The potential for undiscovered conflicts of interest and the consequent harm, for example, would be significantly increased if lawyers and law firms were freely permitted to practice law using multiple business identities simultaneously.

¹⁴ *Id.*, Rule 7.5(a) of the Louisiana Rules of Professional Conduct.

¹⁵ Such other academic and/or professional qualifications truthfully attained by the lawyer, when simply listed, are plain facts which are not, by themselves, false, deceptive or misleading.

any of the prohibitions of the Louisiana Rules of Professional Conduct and, in particular, under any of the proscriptions within Rules 7.1, 7.4 and 7.5.

B. “Of Counsel” Designation

With respect to letterheads and other forms of firm identification, the Committee believes that any lawyer who is designated thereon as “Of Counsel” should have some type of appropriate affiliation with the firm in order to be so designated.¹⁶ The “Of Counsel” designation would be appropriate if the lawyer in question is, for example, a part-time lawyer, a retired lawyer who is still available for and is, in fact, used in consultation with actively practicing members of the firm, or other relationships which are something less than regular employment but in which the lawyer does provide services, advice or consultation through and on behalf of the firm.¹⁷

Conclusion

¹⁶ ABA Formal Opinion 90-357 notes that “...*the use of the title ‘of counsel’, or variants of that title, in identifying the relationship of a lawyer or law firm with another lawyer or firm is permissible as long as the relationship between the two is a close, regular, personal relationship and the use of the title is not otherwise false or misleading...*” [emphasis added].

¹⁷ Curiously, some lawyers and law firms proceed under the mistaken belief that designating someone as “Of Counsel” on a firm’s letterhead somehow actually insulates and/or removes that lawyer from the general, public identity of the firm, when, in fact, the very act of including and designating a lawyer on firm letterhead, even as “Of Counsel”, almost certainly increases the likelihood that the lawyer in question will also be considered as “associated in” and having an “association with” the firm—i.e., as a part of the firm—for purposes of evaluating conflicts of interest, imputation of conflicts, disqualification, etc. *Id.*, ABA Formal Opinion 90-357. See also Rule 1.10(a) of the Louisiana Rules of Professional Conduct. The Committee does not, however, mean to suggest or imply that there may not be other more fact-specific advantages and/or reasons under law why a law firm might nevertheless wish to designate a lawyer on law firm letterhead as “Of Counsel”.

It is the view of the Committee that, according to Rule 7.5(a), multiple business identities may not be used simultaneously in the practice of law either by individual lawyers or law firms. However, there is no prohibition against the use of a fictitious or trade name under specific circumstances that do not violate any of the Louisiana Rules of Professional Conduct, particularly Rule 7.4. If a fictitious or trade name is utilized, it must be utilized consistently and exclusively throughout all written communications in the lawyer's practice and appear with the lawyer's signature on all legal pleadings and other legal documents.