

BAR ASSOCIATION OF ERIE COUNTY  
COMMITTEE ON PROFESSIONAL ETHICS

Opinion 2009-\_\_\_\_  
March 2, 2009

Topic: Lawyers' use of Trade Names  
So long as a lawyer uses her legal name in her firm name, she may also incorporate the type of law to which she limits her practice as to do so would not constitute practicing under a trade name.

Code: DR 2-102(B)

QUESTION

May an attorney who limits her practice to immigration law use a firm name which consists of her last name and "Immigration Law?"

DISCUSSION

Disciplinary Rule 2-102(B) states that an attorney, "in private practice shall not practice under a trade name." It is clear that a lawyer could not practice under the firm name "Immigration Law." The New York State Bar Association Committee on Professional Ethics has opined 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 DR 2-102(B)." N.Y. State Bar Op.740 (2001) Similarly, "Labor Law Rights" was found to be an impermissible trade name in N.Y. County Lawyers' Ass'n Op. 735 (2006), The question is whether using "Immigration Law" in conjunction with the legal name of the owner of the firm is also forbidden.

Any analysis of this question cannot ignore the constitutional limitations that have been applied to ethical proscriptions when dealing with matters of free speech. Therefore, when analyzing these limitations, it is necessary to insure that they serve some important state purpose. This was the analysis used in *Matter of von Wiegen*, 63 NY2d 163, 481 NYS2d 40 (1984). In deciding to overturn the Appellate Division's refusal to allow the use of the phrase, "The Country Lawyer," under von Wiegen's name, the Court of Appeals stated:

... The purpose of the prohibition against trade names .. is to prevent the public from being deceived about the identity, responsibility and status of those who use the name. The use of the motto "The Country Lawyer" in respondent's flyer did not deceive in that way because the lawyer's name was inserted apart from the motto.

Thus, when considering whether "The X Group", where X is the attorney's name is an impermissible trade name, the Committee on Professional Ethics stated that DR 2-102(B) :

...restricts the use of trade names to protect the public from being deceived about the identity, responsibility or status of the individuals using the name.

After reviewing several prior trade name cases, the Committee concluded:

We do not believe that the name "The X Group" would deceive the public about the identity, responsibility or status of those who use the name...The name "The X Group" signifies noting more than that the attorney X practices law together with a group of other individuals, which is in fact the case. ...[T]he term "Group" is not misleadingly suggestive, would not induce clients to select the law firm based on erroneous assumptions about the firm, and would not misrepresent the nature of the entity operating under that name.

We believe that the same analysis is applicable here. The proposed name tells the public that the inquiring attorney practices immigration law, which is apparently true. The proposed firm name is in no way misleading and is allowable.

Therefore, we believe that so long as the attorney's name is stated in the firm name, and the name accurately reflects the limited practice of the attorney, the suggested name does not violate DR 2-102(B).

## CONCLUSION

So long as a lawyer uses her legal name in her firm name, she may also incorporate the type of law to which she limits her practice as to do so would not constitute practicing under a trade name.