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## Firm Names and Letterhead

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### Key Concepts



- Lawyers may use trade and firm names that are truthful and not misleading.
  - Lawyers' firm or trade names must indicate jurisdictional practice limitations, may not use the name of a lawyer who holds public office, and may not suggest that lawyers practice in a partnership, unless that fact is true.
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### Introduction



Like many participants in competitive markets, lawyers often want to create a brand identity for their practice. You can visualize a lawyer's advertisement illustrating that lawyer's brand identity: "Monster Verdict Law!" flashing on the screen with a low-budget Godzilla-like monster squashing miniature insurance company offices overlaid with the slogan: "Squashing insurance companies since 1995. Call 555-CASH."

This kind of advertisement seeks to market a legal practice through a trade name. Further, the advertisement may also communicate on behalf of a number of lawyers who have partnered professionally into the firm being marketed as Monster Verdict Law. Also imagine that Monster Verdict Law has offices or a comparable professional presence in multiple states, each of which requires individualized licensing to practice there.

The practice by lawyers of communication through trade or firm names and the practice of communicating as a firm of multiple lawyers, presents some unique regulatory concerns for the legal profession. Rule 7.5 governs "firm names and letterhead."

## The Rule

### 1. Firm and Trade Names

Rule 7.5 begins by confirming that law firm branding cannot be untruthful or misleading and by authorizing trade names under certain conditions:

#### THE RULE

#### Rule 7.5

#### Firm Names and Letterhead

- (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.

Under Rule 7.5(a), a law firm may employ a trade name, or otherwise name itself as a law firm, so long as the trade name is truthful and not misleading. The comments provide that a firm name may include the names of some or all of the firm's lawyers.<sup>1</sup> The firm name also may include the names of deceased lawyers "where there has been a continuing succession in the firm's identity."<sup>2</sup> The names of non-lawyers in the firm, however, may not be used, nor may the names of lawyers be used who are not associated with the firm.<sup>3</sup> This Rule's branding authority further extends to distinctive web site addresses and comparable professional designations to allow lawyers to market themselves, so long as the designation does not mislead.<sup>4</sup> The comments note, for example, that geographical firm names may be misleading because they can imply that the firm is a type of public legal aid or services office.<sup>5</sup> Therefore, these designations may require a disclaimer to avoid misleading the public.

## 2. Jurisdictional Limitations

The Rule next clarifies how lawyers in a firm that practices in more than one jurisdiction may communicate about the firm's legal services:

### THE RULE

### Rule 7.5

#### Firm Names and Letterhead

- (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 the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

A law firm may use its professional brand across multiple jurisdictions where it maintains offices. Lawyers, however, may not establish a professional presence in jurisdictions where they are not licensed to practice law.<sup>6</sup> Accordingly, if the law firm maintains a professional presence across several jurisdictions, and not all lawyers in the firm are admitted to practice in all the jurisdictions, the law firm's communications must identify the practice limitations of all lawyers in the firm.<sup>7</sup> For instance, a lawyer's business card may identify her as a member of a law firm with offices in states A, B, and C, but the business card will note that the individual lawyer "is not licensed in states B and C."

## 3. Public Official Membership

Rule 7.5 further restricts how law firms may communicate when one of the lawyers in the firm is a public official:

## THE RULE

## Rule 7.5

### Firm Names and Letterhead

- (c) The name of a lawyer holding 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.

This Rule prevents lawyers from trading inaccurately on the name of a public official by marketing that the official is an active firm member when he or she in fact is not.

### 4. Partnerships

Finally, Rule 7.5 addresses how lawyers may represent that they practice as partners:

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

Rule 7.5 makes clear that lawyers who “share[] office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, ‘Smith and Jones,’ for that title suggests that they are practicing together in a firm.”<sup>8</sup> This Rule is rooted in the fact that lawyers who are partners, or otherwise associated with each other by law, share professional and financial responsibility for client matters. Lawyers who simply share office space and resources but maintain different practices, by contrast, generally do not bear mutual responsibility for a client matter unless they agree to an appropriate fee-sharing arrangement where the lawyers “assume[] responsibility for the representation as a whole.”<sup>9</sup> An advertisement that states or implies otherwise is misleading.

**Example.** Did Monster Verdict Law’s firm name and marketing violate Rule 7.5?

**Analysis.** Monster Verdict Law was not prohibited from employing a trade name generally.<sup>10</sup> Nor did “Monster Verdict Law” likely suggest that its lawyers were associated with a government agency, public legal service, or charitable legal service.<sup>11</sup> But, the trade name may be potentially misleading under Rule 7.1.<sup>12</sup>

Trade names that employ artifices to entertain, grab attention, and make a law firm more memorable do not necessarily violate Rule 7.5(a).<sup>13</sup> In this advertisement, however, the law firm did not merely describe itself as “Monster Law” with a visual depiction of a Godzilla-like creature. The firm coined itself “Monster Verdict Law.” This name may invite unjustified expectations about case outcomes.<sup>14</sup> Combined with the advertisement language about squashing insurance companies and the telephone designation “555-CASH,” the firm name “Monster Verdict Law” even more likely could create unjustified expectations about case outcomes.<sup>15</sup> Monster Verdict Law’s trade name therefore arguably could violate Rule 7.5(a).

Moreover, Monster Verdict Law practiced in multiple jurisdictions. Yet, Monster Verdict Law’s advertisement did not identify any practice limitations of its lawyers. If any Monster Verdict Law lawyers were not admitted in a jurisdiction where Monster Verdict Law had an office, the firm violated Rule 7.5(b).

According to Rule 7.5, law firms who advertise through firm or trade names must ensure that those names remain truthful and do not mislead, including not misleading as to the professional relationship between lawyers in the firm. Moreover, lawyers must ensure that advertising accurately offers jurisdictional practice limitations when lawyers in a firm practice across multiple jurisdictions.

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## Quick Summary



Law firms may employ trade names and other professional designations to advertise and brand the firm. The trade name or designation, however, may not be untruthful or misleading. Law firms that practice in multiple jurisdictions through a single law firm name must be careful to identify lawyers who cannot practice in all of the firm's jurisdictions. And, lawyers cannot communicate that they practice as partners or in a professional organization unless that fact is true.

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## Test Your Knowledge



To assess your understanding of the material in this chapter, [click here](#) to take a quiz.

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<sup>1</sup> See DLRPC Rule 7.5, comment 1.

<sup>2</sup> *Id.*

<sup>3</sup> See *id.*; cf. Utah Advisory Ethics Op'n 04-3 (2003) (opining that solo practitioner may not use the firm name "Doe & Associates" if he has no associated lawyers, even if the firm previously had associated counsel or if the firm employs associated non-lawyers, such as investigators or paralegals).

<sup>4</sup> See DLRPC Rule 7.5.

<sup>5</sup> See *id.*

<sup>6</sup> See DLRPC Rule 5.5(a).

<sup>7</sup> See DLRPC Rule 7.5(b).

<sup>8</sup> DLRPC Rule 7.5, comment 2.

<sup>9</sup> See DLRPC 1.5(e) and comment 7.

<sup>10</sup> See DLRPC Rule 7.5(a).

<sup>11</sup> See *id.*

<sup>12</sup> See *id.*

<sup>13</sup> Cf. *Alexander v. Cahill*, 598 F.3d 79, 83-84 (2d Cir. 2010) (reviewing law firm advertisements that depicted lawyers as giants towering over local buildings and providing legal services to aliens).

<sup>14</sup> Cf. DLRPC Rule 7.1, comments 2 and 3.

<sup>15</sup> Contrast e.g., *Alexander*, 598 F.3d at 94-95 (emphasizing "dearth of evidence" that firm monikers like "Heavy Hitters," standing alone, would be misleading).