

**THE PROFESSIONAL ETHICS COMMITTEE  
FOR THE STATE BAR OF TEXAS  
Opinion No. 632**

**July 2013**

**QUESTION PRESENTED**

Do the Texas Disciplinary Rules of Professional Conduct require a Texas lawyer to report to the appropriate disciplinary authority another Texas lawyer's use of a trade name that is based on the name of the city where the second lawyer practices?

**STATEMENT OF FACTS**

While representing his client in negotiations with another party, a Texas lawyer receives a letter from the other party's lawyer who lives and practices in CityX, Texas. The second lawyer's letterhead uses the trade name "CityX Law Group" to identify the CityX lawyer's law firm. The lawyer who receives the letter recognizes that the other lawyer's use of the trade name "CityX Law Group" violates Rule 7.01 of the Texas Disciplinary Rules of Professional Conduct and wonders whether he is required by the Texas Disciplinary Rules to report the violation.

**DISCUSSION**

Rule 7.01(a) of the Texas Disciplinary Rules of Professional Conduct provides that, subject to exceptions not here relevant, "[a] lawyer in private practice shall not practice under a trade name . . . or a firm name containing names other than those of one or more of the lawyers in the firm . . . ." Rule 7.01(e) further provides that, subject to exceptions not here applicable, "[a] lawyer shall not advertise in the public media or seek professional employment by any communication under a trade or fictitious name . . . ." As the lawyer receiving the letter from the CityX Law Group recognized, under these provisions of Rule 7.01, a Texas lawyer is prohibited from practicing law in Texas under a trade name such as "CityX Law Group." The prohibition against practicing law in Texas under a trade name has been confirmed both by court decisions and by Professional Ethics Committee Opinions. See *Rodgers v. Commission for Lawyer Discipline*, 151 S.W.3d 602, 610-11 (Tex. App.-Fort Worth 2004, pet. denied); *Commission for Lawyer Discipline v. C.R.*, 54 S.W.3d 506, 515-16 (Tex. App.-Fort Worth 2001, pet. denied); Professional Ethics Committee Opinions 617 (May 2012), 591 (January 2010), 529 (April 1999), and 398 (November 1978).

In these circumstances the only issue to be resolved is whether the Texas Disciplinary Rules of Professional Conduct require a lawyer to report to the appropriate disciplinary authority another lawyer's violation of Rule 7.01 in using the trade name "CityX Law Group." Rule 8.03(a) provides in relevant part that:

“a lawyer having knowledge that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority.”

Exceptions to this requirement for specified circumstances are set forth in Rule 8.03(c) and (d) (concerning impairment and confidential information) but these exceptions do not arise in the factual situation considered here. Rule 8.03(a) thus requires a lawyer to report another lawyer’s violation of the Texas Disciplinary Rules only if the violation raises a substantial question as to the violator’s honesty, trustworthiness or fitness as a lawyer in other respects. Fitness is defined in the Terminology section of the Texas Disciplinary Rules as follows:

“‘Fitness’ denotes those qualities of physical, mental and psychological health that enable a person to discharge a lawyer’s responsibilities to clients in conformity with the Texas Disciplinary Rules of Professional Conduct. Normally a lack of fitness is indicated most clearly by a persistent inability to discharge, or unreliability in carrying out, significant obligations.”

Comments 1 and 2 to Rule 8.03 give some guidance to determining when reporting is required by Rule 8.03(a):

“1. Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigations when they have knowledge not protected by Rule 1.05 that a violation of these rules has occurred. . . . Frequently, the existence of a violation cannot be established with certainty until a disciplinary investigation has been undertaken. Similarly, an apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Consequently, a lawyer should not fail to report an apparent disciplinary violation merely because he cannot determine its existence or scope with absolute certainty. Reporting a violation is especially important where the victim is unlikely to discover the offense.

2. It should be noted that this Rule describes only those disciplinary violations that must be revealed by the disclosing lawyer in order to avoid violating these rules himself. It is not intended to, nor does it, limit those actual or suspected violations that a lawyer may report. However, if a lawyer were obliged to report every violation of these rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. . . . The term ‘substantial’ refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. . . .”

Thus Rule 8.03(a) would require a lawyer to report another lawyer’s use of the trade name “CityX Law Group” in violation of Rule 7.01 only if this violation raised a substantial

question as to the other lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. In the opinion of the Committee, the use of a trade name such as "CityX Law Group" in the circumstances considered, although clearly a violation of Rule 7.01, is not the type of violation that, standing alone, is sufficiently serious to be the basis for a substantial question about a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects within the meaning of Rule 8.03(a). Accordingly, in the opinion of the Committee, a lawyer who becomes aware of another lawyer's use of a prohibited trade name such as CityX Law Group in letterhead or other public communications is not required to report the violation of Rule 7.01 to disciplinary authorities. As recognized in Comment 2 to Rule 8.03, a lawyer would be permitted to report the other lawyer's violation even though Rule 8.03(a) would not require a report.

It should be noted that a different conclusion could be required if the trade name in question were affirmatively false and misleading with respect to the lawyer or lawyers using the trade name. For instance, if the firm using the trade name "CityX Law Firm," instead of being located in CityX, were located far away from City X and had nothing to do with CityX, the use of such a false and misleading trade name by a lawyer would in many circumstances raise questions about the honesty and trustworthiness of the lawyer concerned, and if so a report to disciplinary authorities of the violation of Rule 7.01 would be required by Rule 8.03(a). In addition, the lawyer's continuous use of the trade name CityX Law Group in violation of Rule 7.01, even if not affirmatively false and misleading, could when combined with other circumstances raise a substantial question about a lawyer's honesty, trustworthiness or fitness such that a report to disciplinary authorities of the violation of Rule 7.01 would be required by Rule 8.03(a). For example, a lawyer who was aware of a second lawyer's continuing use of such a trade name after receipt of an administrative or judicial notification that this use constituted a violation of Rule 7.01 might reasonably conclude that the continued violation raised a substantial question about the second lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

## **CONCLUSION**

The Texas Disciplinary Rules of Professional Conduct do not require a Texas lawyer to report to the appropriate disciplinary authority another Texas lawyer's use of a trade name that is based on the name of the city where the second lawyer practices even though use of such trade name is prohibited by the Texas Disciplinary Rules. A report concerning another lawyer's use of a trade name that is prohibited under the Texas Disciplinary Rules would be required only if the Texas lawyer who considered making such a report concluded that in the particular circumstances the other lawyer's use of the trade name raised a substantial question as to such lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.