

You have indicated that you retired from the practice of law effective January 1, 1990 and that you established legal residence out of state. You further advise the Committee that your former firm wishes to retain your name within the firm name while showing you on the letterhead as “Retired,” and that you will no longer have any financial or other interest in the firm's business. Finally, you indicate that you expect to transfer your Virginia State Bar membership to a “Retired” status.

You have asked that the Committee opine as to the propriety of your former firm retaining your name.

The appropriate and controlling disciplinary rule to the question you raise is DR:2-101(A), which prohibits a lawyer or law firm from using or participating in the use of any form of public communication if such communication contains a false, fraudulent, misleading, or deceptive statement or claim. In addition, Disciplinary Rule 2-102(B) [DR:2-102] indicates that the name of a lawyer holding a public office shall not be used in the name of a law firm.

Further guidance is available through Ethical Consideration 2-13 [EC:2-13] which, in pertinent part, finds that the practice of a law firm's use of a firm name retaining the name of a retired partner is not improper if (1) the firm is a bona fide successor of a firm in which the retired person was a member; (2) the use of the name is authorized by law or by contract; and (3) the public is not misled thereby. Furthermore, EC:2-13 also indicates that the name of a partner who withdraws from a firm but continues to practice law [elsewhere] should be omitted from the firm name in order to avoid misleading the public.

The Committee is of the opinion that the continued use of the retired partner's name in the firm's name along with the indication that the named partner has retired are not improper provided that the retired partner practiced with the firm up to the time of his retirement and so long as the retired partner does not assume public office or practice law elsewhere. The Committee believes that such a use of the retired lawyer's name serves as informational and archival and does not rise to the level of maintenance of “an association” with the firm as proscribed by the requirements of the retired status of VSB membership.

Committee Opinion
September 13, 1990