

You have presented a hypothetical situation involving the dissolution of a law firm. Law firm "ABC" operated for about 50 years as a partnership with successive changes of partners and names, but always including A and B first in the name. In 1993, the partnership converted to a professional limited liability company, operating under the name of ABC, L.C. As of January 1, 1997, the firm began a process of dissolution.

Attorneys C and E from the dissolved firm are continuing to use the original firm name (ABC, L.C.) while occupying the same office suite and using the same telephone numbers, addresses, facsimile numbers, etc. Attorneys C and E are also practicing law under a new firm name, ABC & E, P.L.C., using the same offices as the original firm. Both firm names use the names of A and B, who are deceased members of the original firm.

Under the facts you have presented, you have asked the committee to opine as to the propriety of C and E continuing to practice under two firm names, and whether their use of the deceased members' names is ethical.

The appropriate and controlling disciplinary rules relative to your inquiry are DRs 2-102(A) and (C). Also pertinent are Ethical Considerations 2-13 and 2-15. DR 2-102(A) states:

A lawyer or law firm may use or participate in the use of a professional card, professional announcement card, office sign, letterheads, telephone directory listing, law list, legal directory listing, or a similar professional notice or device unless it includes a statement or claim that is false, fraudulent, misleading, or deceptive

DR 2-102(C) states:

A lawyer shall not hold himself out as having a partnership with one or more other lawyers unless they are in fact partners.

EC 2-13 admonishes lawyers to avoid the use of a name which could mislead laypersons concerning the identity, responsibility and status of those practicing under that law firm name. It further states that it is not improper, if the firm is a bona fide successor, to use one or more names of deceased or retired partners. The Ethical Consideration presumes, of course, that the use of such deceased or retired partner's name is authorized by law or under contract. As another authority has noted:

The name of a law firm does not necessarily identify the individual members of the firm, and hence the continued use of a firm name after the death of one or more partners is not a deception and is permissible. . . . The continued use of a deceased partner's name in the firm title is not affected by the fact that another partner withdraws from the firm and his name is dropped, or the name of a new partner is added to the firm name.

New York State Ethics Opinion 45 (1967). In the materials provided to the committee, C claims he is the only principal in the former law firm that has permission to use the names of the two deceased partners. Whether this is in fact the case is a legal issue beyond the purview of the committee. The committee assumes that attorneys C and E are bona fide successors of the old firm of ABC, L.C., and have a legal and/or contractual right to continue to practice under a successor entity using the names of the deceased partners, A and B.

The committee has previously opined that as long as the use of the firm's name is not misleading or deceptive to the general public, and assuming such name is authorized by law or

contract, it is ethical to maintain the use of such a firm name even though it may not correctly identify the firm's members. Legal Ethics Opinion 1285 (October 19, 1989). However, the name of a partner who withdraws from the firm but continues to practice law should be omitted from the firm name in order to avoid misleading the public. Legal Ethics Opinion 277 (December 15, 1975); EC 2-13.

In the facts you present, the committee believes that there is no ethical impropriety with the continued use of the old law firm name for the limited purpose of winding up its affairs. ABC, L.C. has a legal existence for the purpose of concluding its business.

In addition, the use of the name ABC, L.C. for purposes of winding up the firm while simultaneously practicing under a new entity using the name ABC & E, P.L.C., in the committee's opinion, is not improper under the cited rules. The committee assumes, for purposes of this hypothetical, that C has a legal right to practice under a firm name containing the names of the deceased partners (A & B).

Based on the foregoing, the use of A and B in the new firm's name is not a *per se* misrepresentation of the identity, responsibility and status of those practicing attorneys in the firm. The firm could take the additional measure of disclosing on the letterhead that A and B are deceased, but this is not required.

Committee Opinion
September 12, 1997