Committee Opinion
November 21, 1997

LEGAL ETHICS OPINION 1706

LAW FIRM NAME; USE OF DECEASED PARTNER'S NAME BY ATTORNEY WHO NEVER HAD OWNERSHIP INTEREST IN FIRM AND DID NOT WORK DIRECTLY WITH DECEASED PARTNER.

You have presented a hypothetical situation in which partner A, of the law firm, "A & B," dies, and at the request of A's family, B continues to use the name A & B for his sole practice, with A listed on the letterhead with his date of death. Subsequently, B hires C as an independent contractor to provide legal services to clients of "A & B." C works exclusively for "A & B" and is listed on the letterhead of "A & B" as an associate. B now plans to leave private practice to become a full-time prosecutor, and C would like to purchase the physical assets of the practice and operate as a sole proprietor using the name "A & C." C would obtain permission from A's executor and/or family, including a minor in the custody of Mrs. A, to use A's name.

Under the facts you have presented, you have asked the committee to opine as to the propriety of the use of A's name by C, when C has never had an ownership interest in the practice and never worked directly with A, although C has worked exclusively with "A & B" for most of his legal career and has been listed as an associate on A & B's letterhead. In the alternative, could B and C ethically form a partnership called "A B & C" for the remainder of B's time in private practice, with C then using the name "A & C" after B leaves the firm? If it is permissible for C to use the name A & C in either instance, does C need permission to use A's name from all three of A's children, from any one of A's children and/or A's Executor? Would it be considered misleading or impermissible for C, as a sole proprietor, to use the trade name, "A & C" if potential clients asking for A are immediately informed A is deceased, and this information is also disclosed on the letterhead?

The appropriate and controlling disciplinary rule relative to your inquiry is DR:2-102. Also pertinent is EC:2-13.

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, misleading or deceptive.

DR:2-102(B), in pertinent part, allows a lawyer in private practice to use a trade name so long as it does not violate DR:2-102(A).

DR:2-102(C) states:

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> 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 directs 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 the names of deceased or retired partners' names if authorized by law or contract.

As to whether C, as an independent contractor of B's firm, may use the name, "A and C," after B's departure, 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 a firm a name that may not correctly identify the firm's membership. LE Op. 1285. Pursuant to EC: 2-13, this committee has previously found it not misleading for a firm to continue using the name of a retired partner or the name of a deceased partner. See, LE Op. 1376 and LE Op. 1704. In each of those two instances, there remained attorneys who had been partners of the retired/deceased attorney. In contrast, in your inquiry, C has never been a partner of A or B; he has only been an independent contractor of B.

Whether C's status as an independent contractor meets the "bona fide successor" requirement of EC:2-13 is a legal issue beyond the committee's purview. The committee directs your attention to another authority which has opined that it would be improper for an attorney who acquires a practice from another attorney to use that retired attorney's name unless he formed a partnership with the retiring partner prior to the retirement. Maryland Bar Association, Inc.. Committee on Ethics, Op. 93-17 (1992).

In your second inquiry you ask whether C's forming a partnership with B under the name "A, B & C" for the remainder of the time prior to B's departure enables C to properly use A's name in his own practice. This inquiry likewise raises a legal issue beyond the purview of the committee. Provided that such a formation would place C in the ownership succession, i.e., transform C into a "successor in interest," it would not be improper for C to practice under the name of "A & C." As to your third inquiry regarding from whom C must seek consent to use A's name, that determination also involves a legal issue that is beyond the purview of the committee.

Your fourth inquiry as to whether it is misleading for C, as a sole practitioner, to use the firm name "A and C," raises the concern that such a name might suggest that there is more than one attorney in the office. The committee has previously found such a suggestion to be misleading in the use of the word, "group," or the word, "associates," by sole practitioners. See, LE Op. 956 and LE Op. 1532. However, the committee distinguishes the use of such general collective nouns from the use of the specific name of the deceased attorney. Such use is specifically permitted in EC:2-13, assuming that the firm's letterhead will establish that A is deceased. See, LE Op. 1704. Therefore, the committee opines that the fact that C is a sole practitioner does not prevent him from practicing under the firm name of "A and C" provided that C is a "bona fide successor" to the firm.