

**NEW YORK STATE BAR ASSOCIATION**  
**Professional Ethics Committee Opinion**

Opinion #44 - 1/26/67 (22-66) Topic: Duties of Law Clerk.

Digest: Law clerk's role is that of student, and attorney must provide supervision and not permit clerk be involved in matters involving independent discretion or judgment.

QUESTION

I have a young lady law clerk in my office under a Certificate of Clerkship for the four year law study plan. I should appreciate the Committee's opinion as to whether I may properly assign to her duties such as appearing at Calendar Calls, Motion Appearances, Attendance at Mortgage Closings, taking of Depositions and Supplementary Proceedings, etc.

OPINION

The role of a law clerk under a certificate of clerkship is that of a student. He should be encouraged to participate in the various activities of a law office so as to enhance his understanding of law, law practice, and the lawyer's role. But a clerk is not a member of the Bar. Consequently, he cannot assume any responsibility for which a member of the Bar would be answerable to the court had the attorney performed the act himself. Furthermore, all his activities as clerk are subject to appropriate supervision by an attorney.

A clerk should not represent a client in litigation before any court or administrative tribunal, nor should he perform any act where he would be expected to exercise independent discretion. A clerk may, however, appear at and answer calendar calls, providing no argument is necessary and so long as his role is properly confined to a purely ministerial activity. In dealing with the question of calendar calls, the Committee on Professional Ethics of The Association of the Bar of the City of New York in its Opinion No. 78 (1927-28) stated:

"He may answer the call of the calendar provided no argument is necessary. Usually this should be done only when his master and the opposing attorney have agreed beforehand to the answer to be made and it is such that the court will probably agree to without discussion. If discussion arises, the clerk should ask the court to hold or pass the case until he can communicate with his employer."

The clerk may not appear to argue motions, conduct examinations for the purpose of taking the depositions of a witness, or conduct examinations on supplementary proceedings.

A clerk may, without his employer being present, attend mortgage closings and other out-of-court matters, but only so long as his responsibilities are clearly limited to those

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functions not involving independent discretion or judgement.

Finally, a clerk should never independently advise a client concerning his legal rights and duties. Moreover, if a client requests advice from the clerk, either at a face-to-face conference or on the telephone, the client should be informed that the clerk is not a member of the Bar, but only a clerk without the right to give independent legal advice.

For a helpful discussion as to the scope of activities which may properly be assigned to a law clerk not yet admitted to practice, members of this Association are referred to the Association of the Bar Opinion No. 78 (1927-28), supra. As that Opinion concludes:

"In short, a law clerk is, properly speaking, a student, an apprentice, and cannot act in any manner, that is any matter arising in connection with the practice of the law, that calls for the exercise of a lawyer's judgment or participation, independently of his employer or upon his own initiative, and of course could not independently advise clients of his employer's office as to their right or duties."

Opinion #45 - 1/26/67 (23-66) Topic: Firm Name.  
Deceased Partner.

Digest: Not improper to continue use of deceased partner's name in firm so long as not contrary to law or custom, even though other partners' names may change.

Canon: Former Canon 33

QUESTION

Mr. W, the senior partner in our firm, W,X,Y & Z, died on February 6, 1966. We have, since his demise, been continuing our practice under the same firm but with the date of Mr. W's death indicated after his name on our letterhead.

We would appreciate receiving a formal opinion from the Committee as to the propriety of our continuing this practice. We should also like an opinion as to whether or not it is permissible to drop one of the three names of the surviving partners and continue the use of Mr. W's name in the firm title. For example, would it be permissible for the firm to continue practicing under the name of W, X & Y in the event Mr. Z were no longer associated with the firm?