

NEW YORK STATE BAR ASSOCIATION  
Professional Ethics Committee Opinion

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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?

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Are we correct in our assumption that, if it is permissible to continue our practice under the firm name of either W. X. Y & Z, or W, X & Y, in the event other lawyers are admitted to the partnership subsequent to Mr. W's death, their names may not be properly admitted to the firm name.

OPINION

Canon 33 provides, in part, that:

"In the formation of partnerships and the use of partnership names care should be taken not to violate any law, custom, or rule of court locally applicable. .... In the selection and use of a firm name, no false, misleading, assumed or trade name should be used. The continued use of the name of a deceased or former partner, when permissible by local custom, is not unethical, but care should be taken that no imposition or deception is practiced through this use."

Accepted local custom in New York recognizes that 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. A.B.A. Opinions 6 (before adoption of Canon 33) and 267; N.Y. County Opinions 316, 411. As stated in A.B.A. Opinion 267:

"The reason for this is that all of the partners have by their joint and several efforts over a period of years contributed to the good will attached to the firm name. In the case of a firm having widespread connections, this good will is disturbed by a change in firm name every time a name partner dies, and that reflects a loss in some degree of the good will to the building up of which the surviving partners have contributed their time, skill and labor through a period of years. To avoid this loss the firm name is continued and to meet the requirements of the Canon the individuals constituting the firm from time to time are listed."

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 the new partner is added to the firm.

As stated in New York County Lawyers' Association Opinion 316:

"It is not unusual in New York City for the law firms to continue the use in their partnership names of the names of deceased former partners, even through a succession of firms with new members. In general, this is not deemed in the profession or in the community to be fraught with imposition or deception \* \* \*. Where

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the practice is not condemned by law, or is not inconsistent with local custom, or where conditions imposed by law for the continued use of the names of deceased or former partners are complied with, the Committee does not consider that the continued use of such names is professionally improper".

(See also NYSBA Opinion #2 - 11/6/64 (2-64))

Opinion #46 - 1/26/67 (5-66)      Topic: Pamphlets.  
Education of Lay Public and Clients.

Overruled (in part) by 540      Digest: Proper for lawyer to mail pamphlets to clients and make pamphlets available in office where name does not appear on pamphlets and purpose is to teach laymen the advantages of legal services.

Canon: Former Canon 27

QUESTION

1. Is it ethical for a lawyer to send to his clients and friends a pamphlet such as "Do you Need a Will" prepared by the New York State Bar Association?

2. Is it permissible to leave a supply of such pamphlets in his reception room?

OPINION

1. It is ethical for a lawyer to send his clients and friends a pamphlet such as "Do you Need a Will" and other pamphlets prepared by the New York State Bar Association, provided that the pamphlet in no way refers to any specific lawyer or law firm. The name of the individual lawyer or law firm may not be permitted to appear on the pamphlet. A.B.A. Informal Decision No. C768 and Informal Opinion No. 846.

Canon 27 of the Canons of Professional Ethics adopted by the New York State Bar Association forbids solicitation of business, directly or indirectly, through advertisements or other means. It is quite clear that advising the public generally of the advantages to be gained by intelligent guidance of and instruction to the public has been made an exception to Canon 27. Although these pamphlets are, in a sense, advertising, their primary purpose is to teach the layman the benefits and advantages of preventive legal services, benefiting the lay public and "because of the trouble, disappointment, controversy and litigation it will prevent, it will enhance the public esteem of the legal profession and