

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

The statement of policy of the Office for Legal Services recognizes the importance of preserving this confidential relationship in order "that the welfare client be enabled to exercise the same rights and privileges as any individual in any other strata of society." This document also includes the following:

"CONFIDENTIALITY - The confidential relationship between attorney and client, the bulwark of the common law since time immemorial, will be maintained. The client will get the same protection and consideration in regard to any matters discussed with an attorney as is recognized in the general practice of law."

We are in accord with this statement of confidentiality. It is the opinion of the Committee, however, that the provision in the policy statement allowing confidential information to be made available to proper authorities is to some extent inconsistent with the statement of confidentiality.

Since the only purpose of transmitting information to the Administrator is to enable him to decide whether payment for the services should be approved, the lawyer should disclose only such confidential information as is reasonably necessary for this purpose, and then only if in the lawyer's opinion his client has knowingly and intelligently consented to such disclosure. The lawyer has a special responsibility in the case of welfare clients who often have no choice but to give consent and who may not be sufficiently knowledgeable to understand the possible adverse consequences of disclosure. Therefore, it is part of the duty of the attorney not only to advise his client fully, as to the consequences of disclosure, but to endeavor to protect him from such consequences.

Opinion #70 - 2/2/68 (35-67)

Topic: Firm Name.
Retired Partner.

Digest: Local custom dictates use of retiring partner's name.

Canon: Former Canon 33

QUESTION

Question has been raised as to whether partner A who purchased the entire interest of retiring partner B in the two-man law firm "A and B" may continue to use B's name as part of the firm name and continue to keep B's name in a list of names on the left side of the firm letterhead with an indication, in parenthesis, that B is retired. Along with B's name in that list will appear the names of A and one associate.

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OPINION

The Committee is of the opinion that it would not be improper to use the name of the former partner in the above-stated manner if the requirements of Canon 33 of the Canons of Professional Ethics are met. This specifically provides:

"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."

In Opinion 267 of the Standing Committee on Professional Ethics of the American Bar Association, cited in Informal Decision No.505 (12/26/61), it was specifically held that the continued use of the firm name by a sole surviving partner was not unethical in a community in which local custom did not serve to identify the firm name with the individual members of the firm. Where local custom is to include only the names of active partners in the firm name thereby creating the implication that each person whose name is included in the firm name is in fact an active member of the firm, the continued use of the name of a retired partner even with the marginal notation on stationery as to the retirement of one partner could be misleading. The Committee believes that the marginal explanation would not be sufficient to satisfy the intent of Canon 33 in this situation, for reasons that there are numerous occasions when the firm name is used, or noticed, outside of the content of use on law firm stationery. Therefore, local custom is controlling.

In addition, it has been stated in Opinion No. 67 of the Committee on Professional Ethics of New York County Lawyers' Association, that:

"... there is no impropriety in the continued use by surviving or continuing members of a legal co-partnership of a firm name which contains the name of a deceased or retiring partner, provided the provisions of the Partnership Law (if applicable) are complied with, and provided further that there are no special circumstances, such as the disbarment of the retiring partner or his elevation to the Bench, which would make such a course improper."

It may be noted here that custom in New York County has been recognized as permitting the continued use of deceased or retired persons named. Opinion 316.

See also Professional Ethic-et #2 New York State Bar Newsletter, November, 1967