

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

There is no ethical objection to having the stationery of a village which names its public officials also contain the name of its attorney, so identified.

Opinion #148 - 7/27/70 (21-70)      Topic: Partnership Name, Continued Use of Names of Deceased Partners by Their Former Associate

Digest: Improper for an associate of deceased partners to indefinitely continue use of firm name which contains names of deceased partners only

Code\*: DR 2-102(B); DR 2-102 (C)  
EC 2-11; EC 2-13

QUESTION

A father and son, both attorneys and now both deceased practiced law under the firm name of "Jones & Jones". May their former associate continue the firm under the "Jones & Jones" name?

OPINION

DR 201-2(B) provides in part:

"...if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession."

DR 2-102(C) provides as follows:

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

EC 2-11 provides in part:

"For many years some law firms have used a firm name retaining one or more names of deceased or retired partners and such practice is not improper if the firm is a bona fide successor of a firm in which the deceased or retired person was a member, or if the use of the name is authorized by law or by contract, and if the public is not misled thereby."

EC 2-13 states:

"In order to avoid the possibility of misleading persons with whom he deals, a lawyer should be scrupulous in the representation of his professional status. He should not hold himself out as being a partner or associate of a law firm if he is not one in fact, and thus should not hold himself out as a partner or associate if he only shares offices with another lawyer."

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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. (N.Y.State 45 (1967))

However, it is the opinion of this Committee that a former associate may not continue the use of a firm name containing the names of the deceased partners because to do so carries the implication that the surviving associate was a partner. This does not preclude the use of the name for the purpose of winding up the affairs of the former partnership. See N.Y. State 48 (1967) for guidance in connection with the ethical aspects of winding up a deceased lawyer's practice.

Opinion #149 - 7/20/70 (24-70)

Topic: Conflict of Interest;  
Public Attorneys;  
Private Representation.

Digest: Attorneys who are the part-time legal staff of a city should not represent private clients in criminal matters before the same tribunals before which they appear as prosecutors on behalf of the city.

Code\*: DR 5-105 (A), (B) and (C)  
Former Canon 6.

QUESTION

May members of the part-time legal staff of a city's Corporation Counsel represent private defendants in criminal proceedings?

OPINION

DR 5-105(A), (B) and (C) provide:

"(A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR 5-105 (C).

"(B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR 5-105(C).

"(C) In the situations covered by DR 5-105 (A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each."

The consent based upon full disclosure that is mentioned in DR 5-105 (C) cannot be utilized by one who has an official position. (See ABA Opinions 16, 34, 71, 77 and 192.)