

**KENTUCKY BAR ASSOCIATION**

**Ethics Opinion KBA E-83**

Issued: January 1974

**Question:** May lawyers continue use of the name of a deceased attorney whose practice has been assumed by the lawyers when in fact no partnership agreement ever existed?

**Answer:** No.

**Reference:** DR 2-102

**OPINION**

A recent inquiry by a Kentucky attorney poses a very precise and often raised question for the Ethics Committee to decide:

Myself and an associate are intending to establish a law practice in offices formerly occupied by an attorney who is now deceased. The heirs, in their desire to see continued a law practice which might be identified with the deceased attorney, have asked that we retain her name in the title of our proposed firm

Canon 33 of the older Canons of Professional Ethics stated: "In the selection and use of a firm name, no false, misleading, assumed, or trade name shall be used."

And, the later and current Code of Professional Responsibility states in DR 2-102(B):

A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more lawyers in the firm and is 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.

The key to the Disciplinary Rule lies in the word "continuing." In the situation we are presented with there is no continuing line of succession. Rather, the new law firm as proposed will be only a successor to the former, and there has never been a true partnership relation among the lawyers as is required by DR 2-102(C).

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

KBA Opinion E-11 briefly touched upon a matter similar to the one at hand, but is distinguishable in the fact that in that situation there actually existed a partnership between the deceased and one of the succeeding partners of the firm.

As a result of the Canons and the Code, it would seem that the name of the deceased attorney may not be included in the firm name nor continued in the telephone book.

ABA Formal Opinion 266 (dated June 2, 1945) and Informal Opinion 648 lend aid in determining just what course of action is to be followed in this set of circumstances.

It is entirely proper for the professional colleagues of a deceased lawyer, and with the approval of the widow or personal representatives, to take such steps as are necessary to protect the immediate interests of the clients, and to advise such clients that they are doing so, making it clear to the clients that the papers of the latter will be turned over promptly to any other attorney whom the client may desire to designate. They may advise all former clients that their files have been left in their custody and where they may be found. They may not solicit continuation of those matters with them.

If announcements are to be sent they must be proper according to DR 2-102(A)(2):

A brief professional announcement card stating new or change associations or addresses, change of firm name, or similar matters pertaining to the professional office of a lawyer or law firm which may be mailed to lawyers, clients, former clients, personal friends and relatives.

The simpler and more customary the form, content and appearance of the announcement the better. Those announcements which may be construed as veiled bids for employment are prohibited (ABA Informal Opinion A-146). A second qualification of announcements is that they be sent only to those laymen whose personal relationship would make it reasonable to suppose the recipient would be interested in the content of the announcement (ABA Informal Opinion A-146).

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***Note to Reader***

*This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). Note that the Rule provides: "Both informal and formal opinions shall be advisory only; however, no attorney shall be disciplined for any professional act on his part performed in compliance with an opinion furnished to him on his petition, provided his petition clearly, fairly, accurately and completely states his contemplated professional act."*