



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in July 2010. Please see the 2010 Illinois Rule of Professional Conduct 7.5(a) with its Comment [1]. See also ISBA Ethics Advisory Opinion 84-10. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

**Opinion Number 709
November 24, 1980**

**Topic: Use of name of deceased
lawyer in firm name.**

Digest: It is professionally proper for a law firm's name to contain the name of a deceased member of the firm.

Ref: Rule 2-102;
EC 2-11;
DR 2-102 (B); and
ISBA Opinions 427 and 556

QUESTION

Law firm A & B contains the name of A, who died in 1972. B joined A's firm in 1965 and the name of the firm was changed to A & B.

C joined the firm in 1975 and became a partner in 1978. The firm would now like to change its name to A, B & C. The firm desires to retain A's name in the firm name.

The firm inquires whether a change in the name would be misleading or false under the Illinois Code of Professional Responsibility.

OPINION

The use of the name A, B, and C would be professionally proper under the circumstances.

The ISBA Code of Professional Responsibility long had the following provision in DR 2-102(B):

"...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."

This provision was interpreted as allowing the use of a deceased partner's name even by a lawyer who did not practice with the deceased partner, as long as there was an historical continuity of the firm name. (See e.g., ISBA Opinions 427 and 556.)

The Illinois Code of Professional Responsibility adopted by the Illinois Supreme Court as of July 1, 1980, has deleted all references to the use of the name of a deceased member of a firm. The Committee Commentary to Rule 2-102 indicates that this deletion was deliberately intended to broaden the use of names under which a firm may practice, and specifically allows the use of a trade name:

"It is difficult to make a principled distinction between permitting a law firm to practice under the name of long-departed founding fathers, while at the same time prohibiting the use of other names, e.g., 'Law Clinic.'"

The Committee reaffirms the Illinois State Bar Association position opposing the use of manufactured trade names. The Committee disagrees with the Code Committee (Stanley Committee) commentary equating such trade names with firm names denoting a long historical continuity of practice easily recognized by the public.

We are of the opinion that it is professionally proper to use in a firm name the name of a deceased lawyer who was a member of the firm. EC 2-11 is still a sound guide as to how a deceased lawyer's name may be used:

"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, if the use of the name is authorized by law or by contract, and if the public is not misled thereby."

In this situation, the firm is a bona fide successor of a firm in which A was a member and the public will not be misled by the continued use of his name. We assume that the use of the deceased lawyer's name was authorized by contract or in some other manner.

The firm should take reasonable steps to show that the deceased person is actually deceased, such as

by indicating on the firm stationery the years during which the member practiced with the firm (e.g. 1943-1972).