



**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 Rules of Professional Conduct 7.1 and 7.5(d). 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 84-10
January 2, 1985**

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

Digest: It is not permissible for a former associate of a deceased lawyer to use the deceased lawyer's name in forming a new firm.

Ref: Rules 2-101, 2-102; EC 2-11;
ISBA Opinions 709, 556 and 427
ABA Model Rules 7.1, 7.5; ABA Informal Opinion 1174

FACTS

Lawyer A was the sole shareholder of A Ltd. Lawyer W was an associate of A Ltd. from November 1979 until A's death in May 1983. W worked with A's clients on numerous matters during his association with A. W was to become a partner of A in January 1984. After A's death, W purchased the physical assets of A Ltd. and continued to work for many of A's former clients. In August 1983, W formed a firm named "A & W." The new firm's letterhead shows the names of A & W above a line over the names of two associates, with a notation indicating the years of A's birth and death.

QUESTION

W applied for a listing in a legal directory as A & W. The directory has advised W that it will

not list the firm as A & W, and W has asked the Committee for a formal opinion that the use of the name A & W is proper.

OPINION

The use of the name A & W would not be professionally proper under the circumstances given.

The Committee believes that the use of A's name in the new firm is misleading, contrary to Rule 2-101. The use of A's name in the firm name and the listing of the names of A and W together above the line on the firm letterhead imply both that A & W firm existed prior to A's death and that A and W were partners prior to A's death, neither of which is true. The use of A's name as indicated is therefore misleading and not permissible.

In Opinion No. 709, the Committee conclude that it was proper under Rule 2-102 to continue to use the name of a deceased lawyer who had been a member of the firm in a firm name. In that opinion, the Committee cited EC 2-11 as a sound guide as to how the name of a deceased partner 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 a practice is not improper if the firm is a bona fide successor of the firm in which the deceased or retired person was a member, if the use of the name is authorized by law or contract, and if the public is not misled thereby.

In Opinion Number 709, the Committee assumed that the use of the deceased lawyer's name was authorized by contract or in some other manner and concluded that the firm was a bona fide successor of the firm in question and that the public would not be misled by the continued use of the name. The Committee also reaffirmed the Illinois State Bar Association position opposing the use of manufactured trade names.

The Committee believes that the name A & W is a "manufactured" trade name under the circumstances given. A and W were never partners when A was alive, and no firm known as A & W ever existed while A was alive. There could be no continued succession of identity because there was no A & W firm until after A's death.

The Committee notes that the relevant ABA authorities require the same conclusion. Informal Opinion 1174 states in part that a lawyer may not purport to be the successor of another lawyer with whom he was merely associated, but not a partner. Rule 7.5(d) of the ABA Model Rules of Professional Conduct also provides that "lawyers may state or imply that they practice in a partnership...only when that is the fact." Although Rule 7.5(d) is written in the present tense, the Committee believes that a lawyer should not state or imply that he formerly practiced in a partnership unless that was the fact. Finally, the comments to Rule 7.5 of the ABA Model Rules state:

A firm may be designated by the names of all or some of its members, by the

names of deceased members where there has been a continuance of succession in the firm's identity or by a trade name such as "ABC Legal Clinic."...It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm.

In this case, A & W were never partners and the A & W firm is not the successor of A Ltd. To imply otherwise would be misleading, contrary to Rules 7.1 and 7.5 of the ABA Model Rules.