

BAR ASSOCIATION OF ERIE COUNTY
Committee on Professional Ethics

Opinion
10-01

Dated: October 15, 2010

Topic: Firm name including that of retired partner

Digest: The use of a retired partner's name in a law firm name is ethically permissible if it is not misleading

Rule: 7.5(b)and(c)

QUESTIONS

May a lawyer practice under a firm name of X & Y when partner Y has retired, which fact is so noted on the firm's web site professional cards, professional announcement cards, office signs, letterheads and similar professional notices, and X is the sole remaining lawyer at the firm?

OPINION

Although as of April 1, 2009 the New York Rules of Professional Conduct (the "Rules") replaced the New York Code of Professional Responsibility (the "Code") there is no substantive difference in the provisions governing the answer to this inquiry.

Rules 7.5(b) and (c) provide in pertinent part:

"(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 of the lawyers in the firm, except that the name of a professional corporation shall contain "PC" or such symbols permitted by law, the name of a limited liability company or partnership shall contain "LLC," "LLP" or such symbols permitted by law and, 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. . ."

"(c) Lawyers should not hold themselves out as having a partnership with one or more other lawyers unless they are in fact

partners."

This is the identical language contained in DR 2-102(B) and (C) of the Code.

The question then becomes (a) is the firm name X & Y misleading by indicating that the firm contains more than one lawyer, (b) does the exception permitting the retention of a retired partner in the firm name apply in such situation and (c) does the firm name X & Y suggest that a partnership exists?

The exception contained in Rule 7.5(b) permits a firm to continue to use in its name the name of a retired partner if otherwise lawful. Thus under this provision the firm may continue to use Y in the firm name if otherwise lawful. However the firm's letterhead should indicate that Y is retired. *Simon's New York Code of Professional Responsibility Annotated* 269(2008 ed.) The exception trumps the provision on misleading firm names contained in the same Rule and in fact is not misleading if the fact that Y is retired is set forth on the firm's letterhead and in other of the firm's materials.

The continued use of X & Y as the firm name does not violate the prohibition contained in Rule 7.5(c) as the firm name does not necessarily imply that the named individuals are practicing as partners where it is disclosed on the firm's letterhead and elsewhere that one of the individuals is retired. Nothing in the Rules prohibits a retired partner to continue as a partner in the firm as that person is still a lawyer. Furthermore, there is nothing in the Rules that prohibits the firm from paying the retired lawyer a share of the firm's income.

Whether the firm X & Y can continue as a partnership after Y retires, whether the firm is required to file an assumed name certificate and whether the firm can pay the retired partner a portion of future earnings as part of retirement compensation are all questions of law beyond the jurisdiction of the Committee. There is nothing contained in the Rules that would prohibit retirement pay to a retired partner. Rule 5.4(a) formerly DR 3-102(A) only applies to non-lawyers.

CONCLUSION

For the reasons stated above, the law firm may continue to use the name X & Y after Y retires if that fact is fully disclosed on the firm's letterhead and in other of the firm's materials.

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