

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #2 - 11/6/64 (2-64)

Topic: Firm Name.
Deceased Partner.

Digest: Not improper to continue use of deceased partner's name in firm, so long as not contrary to law or custom, even though other partners' names may change.

Canon: Former Canon 33

QUESTION

I will appreciate it if you will refer the following question to our Legal Ethics Committee.

J. Smith and J. Jones practiced for many years under the partnership name of Smith & Jones. Smith, the senior partner, died. A year after Smith died, Jones and White formed a partnership and now practice under the firm name of Smith, Jones & White. White was never associated with the firm while Smith was alive. Does this violate our code of ethics?

OPINION

Canon 33 of the Canons of Professional Ethics provides "the continued use of the name of a deceased or former partner when permissible by local custom is not unethical, but care should be taken that no imposition or deception is practiced through this use".

In its Opinion No. 67, the Committee on Professional Ethics of New York County Lawyers' Association, stated that "there is no impropriety in the continued use by surviving or continuing members of a legal co-partnership of a firm name which contains the name of a deceased or retiring partner, provided the provisions of the Partnership Law (if applicable) are complied with, and provided further that there are no special circumstances, such as the disbarment of the retiring partner or his elevation to the Bench, which would make such a course improper".

The same views have been expressed by the Committee on Professional Ethics and Grievances of the American Bar Association (A.B.A. Opinion No. 6) prior to the adoption of Canon 33, and in 1933 A.B.A. Opinion 97 after the adoption of the Canon.

In New York, the name of a law firm does not necessarily identify the individual members of the firm, and there would appear to be no impropriety in the use of the name Smith, Jones & White even though White was not associated with the firm during Smith's lifetime.
