

**ETHICS OPINION NUMBER 137
OF THE MISSISSIPPI BAR
RENDERED SEPTEMBER 11, 1987**

FIRM NAMES - The continued use of a deceased lawyer's name by surviving lawyers with whom he practiced is proper if one or more of the surviving lawyers were partners of the deceased, the new firm is a continuation of the firm in which the deceased practiced, and the use of his name is not unlawful or misleading. Under such circumstances, the deceased partner's name may continue to be used by all successive partners in the firm.

The Board of Commissioners of the Mississippi State Bar has been asked to render an opinion on the following facts:

Prior to the death of AB, he and several other lawyers practiced together under the firm name of "AB & Associates." The request for an ethics opinion does not state whether the other lawyers in the firm were partners or employees of AB. After AB's death, a partnership was formed by several of the surviving lawyers in the firm, and continued to operate under the name of "AB & Associates."

Two questions are presented:

- (1) May the firm ethically continue to use the name of "AB & Associates"?
- (2) May the firm ethically use a name comprised of the surname of AB and the partners in the new firm (e.g., "B. C, D & E")?

For the reasons stated below, the Board answers both questions in the negative. Rule 7.1 of the Mississippi Rules of Professional Conduct directs a lawyer not to make a "false, deceptive or misleading communication about the lawyer or the lawyer's services." Rule 7.5(a) states in full:

- (a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A lawyer in private practice shall not practice under a trade name or a name that is misleading as to the identity of the lawyer or lawyers practicing under such name.

In pertinent part, the comment to Rule 7.5 states:

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. However, the name of a living lawyer who does not have a continuing professional relationship with the lawyer or law firm shall not be included in a list of lawyers on the firm letterhead unless designated "of counsel".

See also former DR 2-102 [A] and Ethical Consideration 2-11 of the Mississippi Code of Professional Responsibility.

It is not uncommon for law firms to continue to use a partner's name after the partner's death. Such use, if otherwise lawful, is approved by Rule 7.5 and the accompanying comment as a limited exception to the requirement that a firm name consist of one or more lawyers in the firm. It is a practice that has prevailed and been approved for many years. See ABA Opinion 6 (1925) and Opinion 208 (1940). That practice has depended on the existence of an actual partnership between the deceased member and one or more of the remaining members of the firm, and the new firm must in fact be a continuation of the firm in which the deceased partner was a member. Under such circumstances, the deceased partner's name may continue to be used by all successive partners in the firm. ABA Opinion 318 (1967). In the absence of a prior partnership, however, use of a deceased lawyer's name by those merely employed by or associated with him is improper.

After observing that the term "associate" is not defined by the Ethical Considerations and Disciplinary Rules of the Code of Professional Responsibility, ABA Opinion 330 (1972) states:

It has been said, "The word 'associate' has a variety of meanings. Principally through custom the word when used on letterheads of law firms has come to be regarded as describing those who are lawyer employees of the firm. Because the word has acquired this special significance in connection with the practice of law the use of the word to describe relationships other than that of employer-employee is likely to be misleading." *In re Sussman*, 241 Ore. 246, 405 P.2d 355 (1965). ABA Opinion 310 (1963) adds that "associates" may be used "to describe a situation in which the firm or the individual [lawyer] has other lawyers working for them or him who are not partners and who do not generally share in the responsibility and liability for the acts of the firm."

Addressing the propriety of a law list containing the name of "C. F. M. & Associates", ABA Opinion 219 (1941) states:

The use of the word "associates" in conjunction with the name of an individual negatives the existence of a partnership. It implies no more than that the individual practitioner employs law clerks. The associates would obviously have no right to continue to use the name of "C. F. M." after his death.

See also ABA Opinion 310 (1972).

Therefore, it is the opinion of the Board that, if none of the members of the new firm was a partner of AB at the time of his death, the use of AB's name by the new firm, in any manner, is professionally improper.

It is also the opinion of the Board that, in any event, use of the name "AB & Associates" by the new firm is misleading. Regardless of the nature of the actual relationship between AB and the other lawyers prior to his death, the name "AB & Associates" certainly did not convey to the public a partnership relationship between them if one existed. His death cannot now provide that meaning to the name "AB & Associates" for use by the new firm.

Furthermore, as used by the new firm under the circumstances described above, the name "AB & Associates" may constitute a trade name. Trade names are prohibited by Rule 7.5(a) of the Mississippi Rules of Professional Conduct. As noted in part by former Ethical Consideration 2-11:

The name under which a lawyer conducts his practice may be a factor in the selection process. The use of a trade name or an assumed name could mislead laymen concerning the identity, responsibility, and status of those practicing thereunder.

In summary, it would be improper for the new firm to continue to use the name of AB & Associates. It would also be improper to use AB's name in any other firm name because, given the use of the firm name which negatives the existence of a partnership, none of the surviving and succeeding members were partners of AB at the time of his death, the new firm is not a continuation of the firm in which AB was a partner, and the use of AB's name would necessarily mislead the public.