

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-298
Issued: November 1984

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), especially Rules 7.01-7.50 and the Attorneys' Advertising Commission Regulations, before relying on this opinion.

Question: A partner in a law firm is elected to Congress. May the firm leave the departing partner's name on the letterhead?

Answer: Yes, if the Congressman or Congresswoman continues to actively and regularly practice law as a member of the firm.

References: Code of Professional Responsibility DR 2-102 and EC 2-12; ABA Formal Opinion 318 (1967); ABA Informal Opinions 1134 (1969) and 1205 (1972).

OPINION

We begin with the following provisions of the Code:

DR 2-102(B)... A lawyer who assumes a judicial, legislative, or public executive or administrative post or office shall not permit his name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which he is not actively and regularly practicing law as a member of the firm, 109 and during such period other members of the firm shall not use his name in the firm name or in profession notices of the firm.

EC 2-12 A lawyer occupying a judicial, legislative, or public executive or administrative position who has the right to practice law concurrently may allow his name to remain in the name of the firm if he actively continues to practice law as a member thereof. Otherwise, his name should be removed from the firm name, and he should not be identified as a past or present member of the firm; and he should not hold himself out as being a practicing lawyer.

Footnote 109 to DR 2-102 cites a portion of ABA Opinion 318 (1967), to wit:

“Where a partner whose name appears in the name of a law firm is elected or appointed to high local, state or federal office, which office he

intends to occupy only temporarily, at the end of which time he intends to return to his position with the firm, and provided that he is not precluded by holding such office from engaging in the practice of law and does not in fact sever his relationship with the firm but only takes a leave of absence, and provided that there is no local law, statute or custom to the contrary, his name may be retained in the firm name during his term or terms of office, but only if proper precautions are taken not to mislead the public as to his degree of participation in the firm's affairs."

The Code was also construed in ABA Informal Opinion 1205 (1972), which provided:

It is the opinion of this Committee that in accordance with the above Disciplinary Rule, it would be improper for you to continue to have your name as part of your firm's name, unless you are actively and regularly practicing law as a member of the firm. DR 2-102(B). However, you have indicated that you have already removed your name from the firm name.

With reference to your firm continuing to list your name as a partner on its letterhead and card, this Committee, in Informal Opinion 1134 (see also Formal Opinion 318), ruled that if a lawyer who was a U. S. Senator and listed as counsel to a firm was actively and regularly practicing law, then the firm could use a letterhead showing that he is a lawyer and also showing that he is "Counsel" to the firm, if in fact he practices in the offices of that firm and renders legal advice to the clients of that firm.

The Committee is of the opinion that if you meet the requirements as set forth in Informal Opinion 1134, your name could continue to be listed as a partner on the firm's letterhead and card.

However, the Committee believes that you and your firm should keep in mind and adhere to the following Ethical Considerations and Disciplinary Rules.

EC 2-12. A lawyer occupying a judicial, legislative, or public executive or administrative position who has the right to practice law concurrently may allow his name to remain in the name of the firm if he actively continues to practice law as a member thereof. Otherwise, his name should be removed from the firm name, and he should not be identified as a past or present member of the firm; and he should not hold himself out as being a practicing lawyer.

EC 8-8. Lawyers often serve as legislators or as holders of other public offices. This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system. A lawyer who is a public officer, whether full or part-time, should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with his official duties.

DR 9-101. Avoiding Even the Appearance of Impropriety.

DR 9-101(C). A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

EC 9-4. Because the very essence of the legal system is to provide procedures by which matters can be presented in an impartial manner so that they may be decided solely upon the merits, any statement or suggestion by a lawyer that he can or would attempt to circumvent those procedures is detrimental to the legal system and tends to undermine public confidence in it.

The members of the Ethics Committee find the above guidelines to be a sufficient answer to the question posed.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.