

Opinion 466
October 1990
Tex. Comm. on Professional Ethics, Op. 466, V. 54 Tex. B.J. 76 (1991)

FACTS

A law firm has practiced law in the state of Texas for a number of years under the name "A, B & C." The "A" in the law firm name is the last name of Lawyer A. Lawyer A determines to leave the A, B & C law firm and stop practicing law. In connection with the termination of his practice, Lawyer A enters into an agreement with the A, B & C law firm allowing the firm to continue to practice law under the "A, B & C" firm name after Lawyer A leaves the firm. Under the agreement, Lawyer A receives periodic payments from the A, B & C law firm. In consideration for these payments, Lawyer A agrees not to represent any current or former clients of the firm, to make his best efforts to assist the law firm in the collection of accounts receivable, and not to take any action that would prevent the law firm from continuing to use Lawyer A's name in the firm name. Under the agreement, future periodic payments to Lawyer A will stop if he breaches any of the requirements of the agreement and in addition there is a liquidated damages provision requiring a large payment by Lawyer A if he takes any action to practice law in his own name in the future. After several years, Lawyer A determines to return to the practice of law and practice under his own name, but without any relationship with the A, B & C law firm.

QUESTIONS PRESENTED

1. Is the agreement between Lawyer A and the A, B & C law firm permissible under the Texas Disciplinary Rules of Professional Conduct (the "Disciplinary Rules")?
2. Under the Disciplinary Rules, is Lawyer A prohibited from returning to the practice of law under his own name?
3. Under the Disciplinary Rules, must the A, B & C law firm change its name if Lawyer A returns to the practice of law?

DISCUSSION

The agreement between Lawyer A and the A, B & C law firm limiting Lawyer A's rights to practice law as a condition for payments after Lawyer A terminates his practice does not violate the Disciplinary Rules. Rule 5.06(a) of the Disciplinary Rules provides that "A lawyer shall not participate in offering or making: (a) a partnership or employment agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement. . . ."

Although the Disciplinary Rules permit an agreement limiting Lawyer A's rights to practice law as part of an agreement concerning benefits paid after Lawyer A retires from the practice of law, Lawyer A is not prohibited by the provisions of the Disciplinary Rules from returning to the practice of law contrary to the terms of the agreement. The question of rights and obligations of the A, B & C law firm and Lawyer A in such circumstance is a question of law which does not involve principally the interpretation of the Disciplinary Rules and hence is not a question appropriate for this Committee.

The Committee believes that the Disciplinary Rules do not prohibit the A, B & C law firm from continuing to use the name of Lawyer A in the law firm name if the firm chooses to do so after Lawyer A returns to the practice of law. Rule 7.04(a) of the Disciplinary Rules provides in part that "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." In view of the fact that Lawyer A retired from the A, B & C law

firm, the Committee believes that the A, B & C law firm may leave its name unchanged after Lawyer A recommences his law practice provided that the A, B & C law firm does not take any action that would cause firm clients or the public to think that Lawyer A is continuing to practice law in the A, B & C law firm. Rule 7.04(d) of the Disciplinary Rules provides that "[a] lawyer shall not hold himself out as being a partner or associate with one or more other lawyers unless they are in fact partners or associates."

CONCLUSION

1. The agreement restricting Lawyer A's practice of law as a condition for the payment of benefits by the A, B & C law firm after termination of Lawyer A's practice of law is not in violation of the Disciplinary Rules.

2. Lawyer A is not prohibited by the Disciplinary Rules from returning to the practice of law under his own name. The question of the rights and obligations of Lawyer A and the A, B & C law firm under their agreement is principally a legal question not governed by the Disciplinary Rules.

3. Unless otherwise required by law, under the Disciplinary Rules the law firm may continue to use the "A, B & C" name after Lawyer A returns to the practice of law so long as the A, B & C law firm does not take any actions that would mislead clients or the public as to the relationship between Lawyer A and the law firm.