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**E-87-6 Termination of law practice by solo practitioner: Sale and transfer of assets**

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**Facts**

An associate of a solo practitioner wishes to continue the law practice upon the death of the solo practitioner. The lawyers have entered into a buy-sell agreement allowing the associate to purchase the building and fixtures at the time of death and to continue as attorney on the pending files in the law office.

**Question**

What are the ethical considerations in transferring the physical assets and files of a law office in which the partner(s) or shareholder(s) has (have) ceased practicing law?

**Opinion**

In its Informal Opinion, 1/63 [reported at 57 Wis. Bar Bull. 90-91 (June 1984)], this committee addressed this question focusing on the prohibition against selling the goodwill and files of a law practice. In his article, "Termination of a Law Practice," 54 Wis. Bar Bull. 51 (July 1981), John B. McCarthy expanded the discussion of these issues to include the topics of division of fees, solicitation, firm name usage as well as sale of files and goodwill. And in Keith J. Kaap's *Ethics and Professional Responsibility: A Handbook for Wisconsin Lawyers*, sections 1.42-1.47 and sections 2.107-2.120 (ATS-CLE 1986), these topics are discussed in further detail.

The aforementioned opinion and resources collectively provide comprehensive guidance and citations on issues relating to termination and transfer of a law practice, which this committee would restate for convenient reference by lawyers as follows:

1. Sale of client files or goodwill is improper. *See, e.g.*, SCR 20.21(6) and Committee on Professional Ethics Informal Opinion, 1/63, reported at 57 Wis. Bar Bull. 90 (June 1984).

2. Upon termination of a lawyer's practice, clients must be informed of their options regarding completion of their representation by counsel of their choice. *See, e.g.*, Committee on Professional Ethics Formal Opinion E-80-18 [reported at 57 Wis. Bar Bull. 69-70 (June 1984)].

3. Associate/employee lawyers may not be included in the name of a law office. *See* SCR 20.06(4)(c) and *Disciplinary Proceedings Against Laubenheimer*, 113 Wis. 2d 680, 335 N.W.2d 624 (1983). *See also* ABA Model Rule of Professional Conduct 7.5(d) and "Comment."

4. Retired or deceased *solo* practitioners' names may not be continued in law office names. *See, e.g.*, SCR 20.06(4)(c) and *Disciplinary Proceedings against Campbell*, 113 Wis. 2d 715, 335 N.W.2d 881 (1983).

5. A solo practitioner's, partner's or shareholder's name must be removed from the law office name upon termination of the lawyer's association with that law office if the lawyer continues to practice law. *See* SCR 20.06 (4)(c).

6. Even if a lawful partnership or service corporation association is formed between a retiring solo practitioner prior to retirement with one or more other lawyers, the solo practitioner's clients must be notified of their options upon his or her retirement. *See* Paragraph No. 2 above.

7. Solo practitioners should plan for continuation and transfer of their law practices in reasonable anticipation of retirement or death. Whether precipitous last minute planning and/or insubstantial partnership or shareholder interests may be viewed by courts as improper circumvention of prohibitions against sale of a law practice are matters of factual inquiry best left to disciplinary authorities and the courts. Some authorities indicate these factors could be relevant to findings of unethical conduct. *See, e.g.*, the Kaap *Handbook* and McCarthy article cited above.