

**PETITION FOR AUTHORITY TO CONTINUE USE OF THE FIRM NAME
SYCIP, SALAZAR, FELICIANO, HERNANDEZ &
CASTILLO, LUCIANO E. SALAZAR, FLORENTINO P.
FELICIANO, BENILDO G. HERNANDEZ, GRE...**

. July 12, 1979

Ponente: MELENCIO-HERRERA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a35c6adbf3c/>

MELENCIO-HERRERA, J.:

Two separate Petitions were filed before this Court 1) by the surviving partners of Atty. Alexander Sycip, who died on May 5, 1975, and 2) by the surviving partners of Atty. Herminio Ozaeta, who died on February 14, 1976, praying that they be allowed to continue using, in the names of their firms, the names of partners who had passed away. In the Court's Resolution of September 2, 1976, both Petitions were ordered consolidated.

Petitioners base their petitions on the following arguments:

1. Under the law, a partnership is not prohibited from continuing its business under a firm name which includes the name of a deceased partner; in fact, Article 1840 of the Civil Code explicitly sanctions the practice when it provides in the last paragraph that:

"The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership."^[1]

2. In regulating other professions, such as accountancy and engineering, the legislature has authorized the adoption of firm names without any restriction as to the use, in such firm name, of the name of a deceased partner;^[2] the legislative authorization given to those engaged in the practice of accountancy - a profession requiring the same degree of trust and confidence in respect of clients as that implicit in the relationship of attorney and client - to acquire and use a trade name, strongly indicates that there is no fundamental policy that is offended by the continued use by a firm of professionals of a firm name which includes the name of a deceased partner, at least where such firm name has acquired the characteristics of a "trade name."^[3]

3. The Canons of Professional Ethics are not transgressed by the continued use of the name of a deceased partner in the firm name of a law partnership because Canon 33 of the Canons of Professional Ethics adopted by the American Bar Association declares that:

"x x x 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. x x x"^[4]

4. There is no possibility of imposition or deception because the deaths of their respective deceased partners were well-publicized in all newspapers of general circulation for several days; the stationeries now being used by them carry new letterheads indicating the years when their respective deceased partners were connected with the firm; petitioners will notify all leading national and international law directories of the fact of their respective deceased

partners' deaths.[5]

5. No local custom prohibits the continued use of a deceased partner's name in a professional firm's name;[6] there is no custom or usage in the Philippines, or at least in the Greater Manila Area, which recognizes that the name of a law firm necessarily identifies the individual members of the firm.[7]

6. The continued use of a deceased partner's name in the firm name of law partnerships has been consistently allowed by U.S. Courts and is an accepted practice in the legal profession of most countries in the world.[8]

The question involved in these Petitions first came under consideration by this Court in 1953 when a law firm in Cebu (the Deen case) continued its practice of including in its firm name that of a deceased partner, C.D. Johnston. The matter was resolved with this Court advising the firm to desist from including in their firm designation the name of C. D. Johnston, "who has long been dead."

The same issue was raised before this Court in 1958 as an incident in G.R. No. L-11964, entitled Register of Deeds of Manila vs. China Banking Corporation. The law firm of Perkins & Ponce Enrile moved to intervene as amicus curiae. Before acting thereon, the Court, in a Resolution of April 15, 1957, stated that it "would like to be informed why the name of Perkins is still being used although Atty. E. A. Perkins is already dead". In a Manifestation dated May 21, 1957, the law firm of Perkins and Ponce Enrile, raising substantially the same arguments as those now being raised by petitioners, prayed that the continued use of the firm name "Perkins & Ponce Enrile" be held proper.

On June 16, 1958, this Court resolved:

"After carefully considering the reasons given by Attorneys Alfonso Ponce Enrile and Associates for their continued use of the name of the deceased E. G. Perkins, the Court found no reason to depart from the policy it adopted in June 1953 when it required Attorneys Alfred P. Deen and Eddy A. Deen of Cebu City to desist from including in their firm designation, the name of C. D. Johnston, deceased. The Court believes that, in view of the personal and confidential nature of the relations between attorney and client, and the high standards demanded in the canons of professional ethics, no practice should be allowed which even in a remote degree could give rise to the possibility of deception. Said attorneys are accordingly advised to drop the name "PERKINS" from their firm name."

Petitioners herein now seek a re-examination of the policy thus far enunciated by the Court.

The Court finds no sufficient reason to depart from the rulings thus laid down.

A. Inasmuch as "Sycip, Salazar, Feliciano, Hernandez and Castillo" and "Ozaeta, Romulo, De Leon, Mabanta and Reyes" are partnerships, the use in their partnership names of the names of deceased partners will run counter to Article 1815 of the Civil Code which provides:

"Art. 1815. Every partnership shall operate under a firm name, which may or may not include the name of one or more of the partners.

"Those who, not being members of the partnership, include their names in the firm name, shall be subject to the liability of a partner."

It is clearly tacit in the above provision that names in a firm name of a partnership must either be those of living partners and, in the case of non-partners, should be living persons who can be subjected to liability. In fact, Article 1825 of the Civil Code prohibits a third person from including his name in the firm name under pain of assuming the liability of a partner. The heirs of a deceased partner in a law firm cannot be held liable as the old members to the creditors of a firm particularly where they are non-lawyers. Thus, Canon 34 of the Canons of

Professional Ethics "prohibits an agreement for the payment to the widow and heirs of a deceased lawyer of a percentage, either gross or net, of the fees received from the future business of the deceased lawyer's clients, both because the recipients of such division are not lawyers and because such payments will not represent service or responsibility on the part of the recipient." Accordingly, neither the widow nor the heirs can be held liable for transactions entered into after the death of their lawyer-predecessor. There being no benefits accruing, there can be no corresponding liability.

Prescinding the law, there could be practical objections to allowing the use by law firms of the names of deceased partners. The public relations value of the use of an old firm name can tend to create undue advantages and disadvantages in the practice of the profession. An able lawyer without connections will have to make a name for himself starting from scratch. Another able lawyer, who can join an old firm, can initially ride on that old firm's reputation established by deceased partners.

B. In regards to the last paragraph of Article 1840 of the Civil Code cited by petitioners, *supra*, the first factor to consider is that it is within Chapter 3 of Title IX of the Code entitled "Dissolution and Winding Up." The Article primarily deals with the exemption from liability in cases of a dissolved partnership, of the individual property of the deceased partner for debts contracted by the person or partnership which continues the business using the partnership name or the name of the deceased partner as part thereof. What the law contemplates therein is a hold-over situation preparatory to formal re-organization.

Secondly, Article 1840 treats more of a commercial partnership with a good will to protect rather than of a professional partnership, with no saleable good will but whose reputation depends on the personal qualifications of its individual members. Thus, it has been held that a saleable goodwill can exist only in a commercial partnership and cannot arise in a professional partnership consisting of lawyers.[9]

"As a general rule, upon the dissolution of a commercial partnership the succeeding partners or parties have the right to carry on the business under the old name, in the absence of a stipulation forbidding it, (s)ince the name of a commercial partnership is a partnership asset inseparable from the good will of the firm x x x x ." (60 Am Jur 2d,s 204, p. 115) (Emphasis supplied)

On the other hand,

"x x x a professional partnership the reputation of which depends on the individual skill of the members, such as partnerships of attorneys or physicians, has no good will to be distributed as a firm asset on its dissolution, however intrinsically valuable such skill and reputation may be, especially where there is no provision in the partnership agreement relating to good will as an asset. x x x" (ibid, s 203, p. 115) (Emphasis supplied)

C. A partnership for the practice of law cannot be likened to partnerships formed by other professionals or for business. For one thing, the law on accountancy specifically allows the use of a trade name in connection with the practice of accountancy.[10]

"A partnership for the practice of law is not a legal entity. It is a mere relationship or association for a particular purpose. x x x It is not a partnership formed for the purpose of carrying on a trade or business or of holding property." [11] Thus, it has been stated that "the use of a *nom de plume*, assumed or trade name in law practice is improper." [12]

"The usual reason given for different standards of conduct being applicable to the practice of law from those pertaining to business is that the law is a 'profession.' x x x

"Dean Pound, in his recently published contribution to the Survey of the Legal Profession, (The Lawyer from Antiquity to Modern Times, p. 5) defines a profession as 'a group of men pursuing a learned art as a common

calling in the spirit of public service, -- no less a public service because it may incidentally be a means of livelihood.'

x x x x x x x x

"Primary characteristics which distinguish the legal profession from business are:

1. A duty of public service, of which the emolument is a byproduct, and in which one may attain the highest eminence without making much money.
2. A relation as an 'officer of court' to the administration of justice involving thorough sincerity, integrity, and reliability.
3. A relation to clients in the highest degree fiduciary.
4. A relation to colleagues at the bar characterized by candor, fairness, and unwillingness to resort to current business methods of advertising and encroachment on their practice, or dealing directly with their clients." [13]

"The right to practice law is not a natural or constitutional right but is in the nature of a privilege or franchise.[14] It is limited to persons of good moral character with special qualifications duly ascertained and certified.[15] The right does not only presuppose in its possessor integrity, legal standing and attainment, but also the exercise of a special privilege, highly personal and partaking of the nature of a public trust." [16]

D. Petitioners cited Canon 33 of the Canons of Professional Ethics of the American Bar Association [17] in support of their petitions.

It is true that Canon 33 does not consider as unethical the continued use of the name of a deceased or former partner in the firm name of a law partnership when such a practice is permissible by local custom but the Canon warns that care should be taken that no imposition or deception is practiced through this use.

It must be conceded that in the Philippines, no local custom permits or allows the continued use of a deceased or former partner's name in the firm names of law partnerships. Firm names, under our custom, identify the more active and/or more senior members or partners of the law firm. A glimpse at the history of the firms of petitioners and of other law firms in this country would show how their firm names have evolved and changed from time to time as the composition of the partnership changed.

"The continued use of a firm name after the death of one or more of the partners designated by it is proper only where sustained by local custom and not where by custom this purports to identify the active members. x x x

"There would seem to be a question, under the working of the Canon, as to the propriety of adding the name of a new partner and at the same time retaining that of a deceased partner who was never a partner with the new one." (H.S. Drinker, op. cit., supra, at pp. 207-208) (Emphasis supplied)

The possibility of deception upon the public, real or consequential, where the name of a deceased partner continues to be used cannot be ruled out. A person in search of legal counsel might be guided by the familiar ring of a distinguished name appearing in a firm title.

E. Petitioners argue that U.S. Courts have consistently allowed the continued use of a deceased partner's name in the firm name of law partnerships. But that is so because it is sanctioned by custom.

In the case of *Mendelsohn v. Equitable Life Assurance Society* (33 N.Y.S. 2d 733) which petitioners Salazar, et al. quoted in their memorandum, the New York Supreme Court sustained the use of the firm name Alexander & Green even if none of the present ten partners of the firm bears either name because the practice was sanctioned by custom and did not offend any statutory provision or legislative policy and was adopted by agreement of the

parties. The Court stated therein:

"The practice sought to be proscribed has the sanction of custom and offends no statutory provision or legislative policy. Canon 33 of the Canons of Professional Ethics of both the American Bar Association and the New York State Bar Association provides in part as follows: '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.' There is no question as to local custom. Many firms in the city use the names of deceased members with the approval of other attorneys, bar associations and the courts. The Appellate Division of the First Department has considered the matter and reached the conclusion that such practice should not be prohibited. (Emphasis supplied)

x x x x x x x x

"Neither the Partnership Law nor the Penal Law prohibits the practice in question. The use of the firm name herein is also sustainable by reason of agreement between the partners." [18]

Not so in this jurisdiction where there is no local custom that sanctions the practice. Custom has been defined as a rule of conduct formed by repetition of acts, uniformly observed (practiced) as a social rule, legally binding and obligatory. [19] Courts take no judicial notice of custom. A custom must be proved as a fact, according to the rules of evidence. [20] A local custom as a source of right cannot be considered by a court of justice unless such custom is properly established by competent evidence like any other fact. [21] We find such proof of the existence of a local custom, and of the elements requisite to constitute the same, wanting herein. Merely because something is done as a matter of practice does not mean that Courts can rely on the same for purposes of adjudication as a juridical custom. Juridical custom must be differentiated from social custom. The former can supplement statutory law or be applied in the absence of such statute. Not so with the latter.

Moreover, judicial decisions applying or interpreting the laws form part of the legal system. [22] When the Supreme Court in the Deen and Perkins cases issued its Resolutions directing lawyers to desist from including the names of deceased partners in their firm designation, it laid down a legal rule against which no custom or practice to the contrary, even if proven, can prevail. This is not to speak of our civil law which clearly ordains that a partnership is dissolved by the death of any partner. [23] Customs which are contrary to law, public order or public policy shall not be countenanced. [24]

The practice of law is intimately and peculiarly related to the administration of justice and should not be considered like an ordinary "money-making trade."

"x x x It is of the essence of a profession that it is practiced in a spirit of public service. 'A trade' x x x 'aims primarily at personal gain; a profession at the exercise of powers beneficial to mankind.' If, as in the era of wide free opportunity, we think of free competitive self assertion as the highest good, lawyer and grocer and farmer may seem to be freely competing with their fellows in their calling in order each to acquire as much of the world's good as he may within the limits allowed him by law. But the member of a profession does not regard himself as in competition with his professional brethren. He is not bartering his services as is the artisan nor exchanging the products of his skill and learning as the farmer sells wheat or corn. There should be no such thing as a lawyers' or physicians' strike. The best service of the professional man is often rendered for no equivalent or for a trifling equivalent and it is his pride to do what he does in a way worthy of his profession even if done with no expectation of reward. This spirit of public service in which the profession of law is and ought to be exercised is a prerequisite of sound administration of justice according to law. The other two elements of a profession, namely, organization and pursuit of a learned art have their justification in that they secure and maintain that spirit." [25]

In fine, petitioners' desire to preserve the identity of their firms in the eyes of the public must bow to legal and

ethical impediments.

ACCORDINGLY, the petitions filed herein are denied and petitioners advised to drop the names "SYCIP" and "OZAETA" from their respective firm names. Those names may, however, be included in the listing of individuals who have been partners in their firms indicating the years during which they served as such.

SO ORDERED.

Teehankee, Concepcion, Jr., Santos, Fernandez, Guerrero, and De Castro, JJ., concur.

Fernando, C.J., and Abad Santos, JJ., no part.

Barredo, Makasiar, and Antonio, JJ., joins J., Aquino in his dissent.

[1] See Memorandum of Salazar, et al., p. 5; see also Petition of Romulo, et al., p. 3.

[2] Citing Sec. 16-A, Public Act No. 3105, as amended by Commonwealth Act No. 342; Sec. 39, Commonwealth Act No. 294; Sec. 23, Republic Act No. 318; Sec. 39, Republic Act No. 184.

[3] Memorandum of Salazar, et al., pp. 7-8.

[4] Memorandum of Salazar, et al., pp. 8-10; Petition of Romulo, et al., pp. 3-4.

[5] Memorandum of Salazar, et al., p. 13; Petition of Romulo, et al., p. 4.

[6] Petition of Romulo, et al., p. 4.

[7] Memorandum of Salazar, et al., p. 11.

[8] Memorandum of Salazar, et al., pp. 6-7 and pp. 16-18; Petition of Romulo, et al., p. 5.

[9] Seddal vs. Keating, 8 App. Div. 2d 44, 185 NYS 2d 630, affd 7 NY 2d 846, 196 NYS 2d 986, 164 NE 2d 860.

[10] Section 16-A, Commonwealth Act No. 342.

[11] In re Crawford's Estate, 184 NE 2d 779, 783.

[12] H.S. Drinker, Legal Ethics (1953), p. 206; see also Canon 33, par. 2, Canons of Professional Ethics.

[13] H.S. Drinker, Legal Ethics (1953) pp. 4-5.

[14] 7 C.J.S. 708.

[15] 5 Am Jur 270.

[16] In re Lavine, 41 P2d 161, all cited in Martin, Legal and Judicial Ethics, Fifth Ed., p. 8.

[17] Canons 1 to 32 which were adopted by the American Bar Association in 1908 were also adopted by the Philippine Bar Association in 1917. The American Bar Association adopted Canons 33 to 45 in 1928, Canon 46 in 1933 and Canon 47 in 1937. On April 20, 1946, when Canons 33 to 47 were already in effect, the Revised Constitution of the Philippine Bar Association was approved and it provided that the Association "adopts and makes its own the Code of Ethics of the American Bar Association." (Martin, Legal and Judicial Ethics, Fifth Ed. p. 341).

[18] 33 N.Y.S. 2d 733, 734.

[19] JBL Reyes & RC Puno, Outline of Philippine Civil Law, Fourth Ed., Vol. 1, p. 7.

[20] Article 12, Civil Code.

[21] Patriarca vs. Orate, 7 Phil. 390, 395 (1907).

[22] Art. 8, Civil Code.

[23] Art. 1830, Civil Code.

[24] Art. 11, Civil Code.

[25] Roscoe Pound, The Lawyer From Antiquity To Modern Times, (1953), pp. 9-10.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.