



Committee on Professional Ethics

Opinion #500 - 12/6/78 (52-78)

Topic: Letterhead; advertising;
registered patent agents;
paralegals

Overrules in part #261

Digest: Firm letterhead may list
non-lawyer employees
such as registered patent
agents and paralegals to
the extent that their
services are relevant to
the selection of counsel
and provided such em-
ployees are clearly
identified as non-lawyers.

Code: Canon 2;
EC 2-9, 2-10;
DR 2-100, 2-101,
2-101(A),(B) and (D),
2-102(A)(4) and
2-102(D) and (E)

Former Canon 27

QUESTION

May the letterhead of a law firm list certain non-lawyer employees such as registered patent agents and paralegals?

OPINION

Prior to the recent amendment of our Code of Professional Responsibility, DR 2-102(A)(4) rigidly circumscribed the information that could be disclosed on a lawyer's professional letterhead. The former Disciplinary Rule did far more than prohibit the inclusion of untruthful or misleading information. It was intended to set a standard of professional dignity which standard was, in turn, thought to encourage public confidence in both the profession and the administration of justice. See, e.g., former EC 2-9 and EC 2-10.

Under this standard, as well as those of former Canon 27, the listing of all non-lawyer employees on a lawyer's letterhead was prohibited. See, e.g., N.Y. State 261 (1972) (paralegals), N.Y. County 589 (1971) (patent agents), N.Y. City 545 (1940) (non-lawyer patent attorney), N.Y. City 829 (1937) (patent agents), ABA Inf. 1367 (1976) (paralegals), ABA Inf. 845 (1965) (office manager), ABA Inf. 619 (1962) (lawyer's secretary); cf., N.Y. State 85 (1968) and ABA Inf. 571(b) (1962) (involving potentially misleading information concerning lawyers).

The Supreme Court's decision in Bates v. State Bar of Arizona, 433 U.S. 350 (1977), led to the adoption in this State of major amendments to the Ethical Considerations and Disciplinary Rules under Canon 2. These amendments not only incorporated the court adopted uniform rules governing lawyer advertising and publicity, but included a number of other court authorized liberalizing amendments permitting the free flow of reliable and useful information about lawyers and their services. See, N.Y. State 487 (1978).

The basic impact of these amendments was to bring about a revolutionary shift of emphasis in favor of the dissemination of information "designed to educate the public to an awareness of legal needs and to provide information relevant to the selection of the most appropriate counsel." DR 2-101(D), as amended. Disciplinary Rules which had seemed to interfere with the dissemination of such information primarily for reasons of professional dignity and etiquette were either repealed or substantially modified. In place of the former broad prohibitions on publicity and commercial advertising, the amendments essentially narrowed the ambit of proscription to specified practices which in themselves were thought to be injurious to both the profession and the public. See, amended DR 2-101(A) and (B); see also, amended EC 2-10.

The only explicit references to professional letterheads contained in the amended Code are now set forth in DR 2-102(A)(4) and (D).¹ Except for the requirements of DR 2-102(D) relating to lawyers not admitted to practice in all jurisdictions listed on a firm's letterhead, the only limitation on information appearing on letterheads is that the information be "in accordance with DR 2-101." The most important of the standards established by amended DR 2-101 are set forth in subdivisions (A), (B) and (D) which now provide:

- "A. A lawyer on behalf of himself or herself or partners or associates, shall not use or disseminate or participate in the preparation or dissemination of any public communication containing statements or claims that are false, deceptive, misleading or cast reflection on the legal profession as a whole.

- "B. Advertising or other publicity by lawyers, including participation in public functions, shall not contain puffery, self-laudation, claims regarding the quality of the lawyers' legal services, or claims that cannot be measured or verified.

* * *

- "D. Advertising and publicity shall be designed to educate the public to an awareness of legal needs and

to provide information relevant to the selection of the most appropriate counsel. Information other than that specifically authorized in subdivision (C) that is consistent with these purposes may be disseminated providing that it does not violate any other provisions of this rule."

The effect of these amendments is to permit lawyers to include on their letterheads the names of their non-lawyer employees whenever the inclusion of such names would not be deceptive and might reasonably be expected to supply information relevant to the selection of counsel.

While non-lawyer status will no longer preclude the use of a person's name on a firm's letterhead, his name should be accompanied by language that makes clear his non-lawyer status. Cf., DR 2-102(D) (requiring a clear statement concerning the "jurisdictional limitations" of a firm's "members and associates" who appear on its letterhead). Thus, for example, the term "registered patent agent" should be qualified by a designation such as "non-lawyer".^{2/} Even then, to avoid deception, such persons should only be listed when their non-lawyer status is relevant to the work of the firm. See, DR 2-101(A) and DR 2-102(A).

Our prior opinion in N.Y. State 261, supra, is overruled to the extent that the same is inconsistent with the foregoing.

For the reasons stated, and subject to the qualifications hereinabove set forth, the question posed is answered in the affirmative.

FOOTNOTES

1/

As amended, DR 2-102 now provides in relevant part:

"A. A lawyer or law firm may use professional cards, professional announcement cards, office signs, letterheads or similar professional notices or devices, provided the same do not violate any statute or court rule, and are in accordance with DR 2-101, including the following:

* * *

"4. A letterhead identifying the lawyer by name and

as a lawyer, and giving addresses, telephone numbers, the name of the law firm, associates and any information permitted under DR 2-105. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer may be designated 'Of Counsel' on a letterhead if there is a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as 'General Counsel' or by similar professional reference on stationery of a client if the lawyer or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession."

Amended DR 2-102(D) provides:

"D. A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings makes clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all jurisdictions; however, the same firm name may be used in each jurisdiction."

2/

Unlike the term "registered patent agent," the term "paralegal," albeit somewhat imprecise, is sufficient without further qualification to make clear the employee's non-lawyer status. Whether use of the term "paralegal" is appropriate to the actual status enjoyed by the employee is another question to be determined under the standards established by DR 2-101(A).
