



## Committee on Professional Ethics

Opinion #538 - 12/15/81 (46-81) Topic: Advertising; letterheads;  
correspondent firm.

Digest: Improper for firm to list  
foreign correspondent  
firm on its letterhead.

Code: DR 2-101, 2-103(B) and (C),  
2-107, 5-105(A);  
EC 6-4.

### QUESTION

May a New York law firm which has entered into an agreement with a French law firm under which each has agreed to serve as an "associate" or "correspondent" law firm for the other, list on its letterhead the French firm as an "associate" or "correspondent" office?

### OPINION

Under the arrangement described in the question, both the New York firm and the French firm would in certain cases represent clients of the other in their respective jurisdictions and make available to the other its offices and office services to the extent necessary. No member of either firm is a partner or associate in the other firm. Whether the arrangement itself is proper depends upon the facts and is a question upon which this Committee does not pass in this opinion. However, consideration should be given to the implications of DR 2-103(B) and (C) and Judiciary Law §479 in this respect. In addition, one should be sensitive to the problems inherent in such arrangements. For example, fees should be divided only in accordance with DR 2-107; the clients should be referred only to counsel competent to handle their particular matter, EC 6-4; conflicts of interest should be avoided, DR 5-105(A).

Prior to the decision in Bates v. Arizona, 443 U.S. 350 (1977), regarding advertising by lawyers, ethics opinions by the New York State, County and City Bar Associations had ruled it improper to list an out-of-state foreign law firm on the letterhead of a New York firm where there was no formal arrangement between the firms. N.Y. State 262 (1972); N.Y. County 608 (1972); N.Y. County 593 (1971); N.Y. County 592 (1971); N.Y. City 867 (1965); N.Y. City 847 (1960).

In N.Y. State 262 (1972), this Committee stated:

"It is improper advertising for a New York law firm or lawyer to list a foreign firm or lawyer as its 'correspondent' either on the New York firm's letterhead or on the entrance to its office. N.Y. County 593 (1971); N.Y. County 592 (1971); N.Y. City 847 (1960); N.Y. City 867 (1965)."

With Bates came a "revolutionary change" in the rule regarding lawyer advertising. Prior to Bates, such advertising was strictly prohibited by the Code. In the post-Bates environment, lawyers can advertise in any reasonable manner they desire so long as their advertisements are not false, misleading or deceptive and otherwise meet the requirements of DR 2-101.

The listing of a French firm on a New York firm's letterhead constitutes advertising. Such advertising -- specifically, the reference to "Correspondent Office," "Associated Office" or "Affiliated Office" -- can be used only if it is not deceptive or misleading under DR 2-101(A).

In our view, such listings are misleading in a letterhead because such terms do not have a generally accepted meaning on the part of the profession or the public. If the terms are used without naming the French firm, but merely listing its address, the letterhead would imply that the French firm is actually a branch of a New York office, complete with resident partners or associates. If the French firm is named, the terms "Associated" and "Affiliated" are nevertheless misleading because they imply that there are partners or associates common to both firms. The use of the word "Office" is misleading because it implies that it is a branch of the New York firm, but that infirmity could be remedied by substituting the word "Firm." We assume that most laymen would understand "Correspondent" to have the same meaning it has when used in a commercial context:

"One who has regular commercial relations with another esp. with a concern at a distance (the New York - of a San Francisco brokerage house)." Webster's Third International Dictionary (G. & C. Merriam Co. 1971).

We nevertheless are of the opinion that the listing is impermissible under DR 2-101(A) because of its capacity to deceive or mislead, in the absence of (i) a much more specific, generally accepted meaning for the word "correspondent" in a legal context, or (ii) an accompanying, detailed explanation.

For example, a layman could reasonably assume that the New York firm would bear some responsibility for services performed by the correspondent firm, as would be the case with branch offices listed on a letterhead; we assume that is not the intent of the parties. A layman could also reasonably assume that all matters brought by him to the New York firm which require legal services in France would be handled by the correspondent firm; if in fact the listing of the correspondent firm on the letterhead of a New York firm has advertising value, it follows that the listing may have been the factor which led the laymen to seek the services of the New York firm in the first place. Yet the considerations to which we refer above which relate to the propriety of the correspondent relation itself prevent the New York firm from making a

referral decision prior to learning the facts of the particular matter involved.

Accordingly, the question is answered in the negative. This opinion, however, does not reach the question of whether the use of these terms would be proper if used in an office brochure or in a legal directory where a full explanation of the relationship is set forth. Cf., ABA Inf. 1189 (1971).

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