

NEW YORK STATE BAR ASSOCIATION

Committee on Professional Ethics

Opinion 695 - 8/25/97 (11-97)

Topic: Use of "Certified Legal Assistant" title on letterhead and promotional materials.

Digest: Use of "Certified Legal Assistant" title is permissible provided certifying entity meets certain standards and disclosure is made of certifying entity.

Code: DR 2-101; DR 2-105(B); DR 1-104(A)(2).

QUESTION

May an attorney identify a legal assistant as a "Certified Legal Assistant" when the assistant has been certified by the National Association of Legal Assistants?

OPINION

The contents of letterheads, promotional materials, and business cards are governed by DR 2-101(A) and DR 2-101(D). DR 2-101(A) prohibits the dissemination of information that is false, deceptive or misleading, and DR 2-101(D) describes the type of information that is appropriate to be included in letterheads or promotional materials.

We have previously concluded that DR 2-101(D) permits lawyers to include the names of non-lawyer employees on letterhead or other materials "whenever the inclusion of such names would not be deceptive and might reasonably be expected to supply information relevant to the selection of counsel." N.Y. State 500 (1978). The listing of paralegals and their services provides the public with information of the type described in DR 2-101(D). N.Y. State 640 (1992). Further, a paralegal may use a business card that lists the name of the firm, the paralegal's name, and a designation of the paralegal's non-lawyer status. N.Y. County 673 (1989).¹

¹ We note also that DR 1-104(A)(2) holds a lawyer responsible for non-lawyer employees who violate a disciplinary rule if the lawyer knows or should have known of the incident and failed to take remedial action. Thus, the manner in which a legal assistant is held out to the public is the responsibility of the lawyer-employer.

In N.Y. State 640, this Committee considered a paralegal's use of the title "Public Benefits Specialist," and noted that New York has not established a certifying authority to prescribe rules regarding when a lawyer may hold himself or herself out as a specialist.² We concluded that there was no authority for use of a "specialist" designation by a lawyer or a paralegal, and any such use would be misleading. N.Y. State 640 (1992); Nassau County Opinion 96-11 (1996); DR 2-101(A) (prohibiting lawyer's dissemination of misleading communication); *cf.* DR 3-101 (prohibiting attorney from aiding in unauthorized practice of law).

The present inquiry is distinguishable from that at issue in N.Y. State 640 since it involves the phrase "Certified Legal Assistant" rather than a claim of specialization in a particular area. We also note that in *Peel v. Attorney Registration and Disciplinary Commission*, 496 U.S. 91 (1990), the Supreme Court held that an attorney has a constitutional right under the commercial free speech doctrine to advertise certification as a specialist, subject to any disclaimer required by the state to make the claim of specialization not misleading. The Court found that the standards for certification set forth by the National Board of Trial Advocacy were "objectively clear" and not misleading. *Id.* at 102. Whatever effect *Peel* may have on DR 2-105(B)'s limitation on an attorney's use of the term "specialist,"³ we conclude that an attorney may include on

² The use of the term "specialist" by lawyers is governed by DR 2-105(B), which provides:

A lawyer who is certified as a specialist in a particular area of law or law practice by the authority having jurisdiction under the laws of this state over the subject of specialization by the lawyers may hold himself or herself out as a specialist, but only in accordance with the rules prescribed by that authority.

New York has not conferred jurisdiction upon any authority to certify lawyers as specialists as provided in DR 2-105(B).

³ The New York State Bar Association's House of Delegates has recently proposed an amendment to DR 2-105(B) that would allow a lawyer to state that he or she has been certified as a specialist under certain enumerated conditions. The proposed amendment to DR 2-105(D) provides:

A lawyer may state that the lawyer has been recognized or certified as a specialist only as follows:

1. A lawyer who is certified as a specialist in a particular area of law or law practice by a private organization approved for that purpose by the American Bar Association or any of the departments of the Appellate Division may state the fact of certification if, in conjunction therewith, the certifying organization is identified and the following statement is prominently made: "The [name of the private certifying organization] is not affiliated with any governmental authority. Certification is not a requirement for the practice of law in the State of New York and does not necessarily indicate greater competence than other attorneys experienced in this field of law.

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letterhead and other materials the identification of a non-legal employee as a “Certified Legal Assistant” provided that term is accompanied by the statement that the certification is afforded by the National Association of Legal Assistants (“NALA”), and provided further that the attorney has satisfied himself or herself that NALA is a bona fide organization that provides such certification to all who meet objective and consistently applied standards relevant to the work of legal assistants. *Id.*

If such conditions are satisfied, use of the certification will not be misleading, and therefore will not violate DR 2-101(A) or DR 1-104(A)(2).

CONCLUSION

The question is answered in the affirmative, subject to the conditions set forth above.

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2. A lawyer who is certified as a specialist in a particular area of law or law practice by the authority having jurisdiction over specialization under the laws of another state or territory may state the fact of certification if, in conjunction therewith, the certifying state or territory is identified and the following statement is prominently made: “Certification granted by the [identity state or territory] is not recognized by any governmental authority within the State of New York. Certification is not a requirement for the practice of law in the State of New York and does not necessarily indicate greater competence than other attorneys experienced in this field of law.

This proposed amendment has not yet been acted upon by the Appellate Division of the New York State Supreme Court.