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Professional Ethics Opinion 89-1, Propriety of Non-Lawyer Employees' Names on Letterheads and Business Cards

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TEXT OF OPINION NO. 89-1



David F. Forte
Chair, Professional
Ethics Committee

Following is the text of Opinion 89-1 as submitted by the Professional Ethics Committee and approved by the Board of Trustees on August 25, 1989.

Headnote

A lawyer or law firm may include on its letterhead and business cards the names and titles of its non-lawyer employees, so long as the letterheads or business card describes such employees as non-lawyers. All lawyers and law firms remain under the supervisory duty to insure that non-lawyer employees do not engage in the unauthorized practice of law, particularly when non-lawyer employees are included on letterheads or are provided business cards.

Statement of Facts

Attorney wishes to add names of non-lawyer employees such as legal assistants to the firm's letterhead, and to provide each employee with business cards indicating the firm and the employee's title.

Question Presented

Does the Code of Professional Responsibility preclude attorneys from listing non-lawyer employees on the firm's letterhead and business cards?

Conclusion

Non-Lawyer personnel may be listed on the firm's letterhead and business cards provided that the information so listed clearly describes the status of these persons as non-lawyers.

Discussion

DR 2-102(A) of the Code of Professional Responsibility directs how lawyers and law firms may identify themselves as well as the names of lawyers who are "members," "associates," and "of counsel" on business cards and let-

terheads. The Code does not speak to how, if at all, employees who are not attorneys may be listed or identified.

The impropriety of listing non-lawyers on a law firm's letterhead was early on asserted by Drinker in his work, *Legal Ethics*. H. Drinker, *Legal Ethics* 228 (1953). That view was followed by the ABA Committee on Ethics and Professional Responsibility in a number of informal opinion during the 1960's. ABA Informal Decision 619 (1962), overruled by ABA Informal Opinion 89-1527 (1989) ABA Informal Opinion 820 (1965), ABA Informal Opinion 1000 (1967), overruled by ABA Informal Opinion 89-1527 (1989). See also Am. B. Foundation, *Annotated Code of Professional Responsibility*, 57 (1959). The strict prohibition was supported by the Ohio State Bar Association in 1975, Informal Opinion 75-9, Oh. St. Bar Ass'n (1975), by the Indiana State Bar Association as late as 1982, Opinion 5, Ind. St. Bar Ass'n (1982), overruled, Opinion 9 (1985), and by an informal opinion of the Board of Commissioners and Grievances and Discipline of the Supreme Court of Ohio in June of 1989. Opinion 89-16 (1989).

By the mid 1970's, however, a more permissive trend had begun across the nation. The ABA began to allow non-lawyers to carry identifying business cards and to permit paralegals to sign letters of the firm so long as there was a written disclaimer of attorney status on the letter. ABA informal Opinion 1367 (1976) The State Bar of Michigan has followed the ABA formula. Ethics Opinions C-139 (), CI-215 (1975), CI-724 (1982), CI-756 (1982), CI-787 (1982), CI-1003 (1984), CI-1155 (1986).¹ Recently, the Board of Commissions on Grievances and Discipline of the Supreme Court of Ohio has allowed a legal assistant to sign a firm letterhead "provided that she is sufficiently identified as a legal assistant so as not to mislead the receiver of the correspondence." Opinion 89-11 (1989).

Most Bar Associations in other states that have faced the problem have opted to permit the names of non-lawyers to appear on a law firm's letterhead. All, however, require some indication of the non-lawyer status of such employees. Opinion 85-4, Fla. Bar (1986) (titles must signify "non-lawyer status"); Opinion 82-19, Ass'n of the Bar of New York City (1982) ("an express representation of the patent agent's non-lawyer status [must be] clearly set forth"); Opinion 87-11, Ill. St. Bar Ass'n (1987) ("permissible if the nonlawyer status of such person is also clearly set forth"); Opinion 83-10, Mass. Bar Ass'n (1983) ("provided it is clear to lawyers and non-lawyers that such employees are not lawyers"); Opinion 9, Ind. St. Bar Ass'n, overruling Opinion 5, above, (1985) (letterhead must be "designed in such a manner that attorneys and non-attorneys are clearly distinguished"); Opinion 970, Va. St. Bar (1987) ("an affirmative statement [must be] added which makes it clear that [a chief] investigator is not licensed to practice law"). The ABA confirmed this trend in 1989 by interpreting the Model Rules to permit the listing

of non-lawyers on letterheads and business cards "provided the listing clearly reveals that the [employee] is a non-lawyer and is not otherwise false or misleading." ABA Informal Opinion 89-1527, overruling Informal Opinions 619, 845, and 1000. It is significant that although the recent ABA Opinion interprets the Model Rules, it explicitly overrules earlier opinions based on the Code of Professional Responsibility.

DR 2-101(A) of the Code of Professional Responsibility prohibits any attorney or law firm from the use of "any form of communication containing a false, fraudulent, misleading or deceptive statement or claim." That policy underlies the details of the Disciplinary Rules that follow. We are of the opinion, therefore, that DR-2-102 is not to be read as excluding non-lawyer employees from a firm's letterhead or from using identifying business cards so long as such listings clearly indicate the status of such employees as non-lawyers so that the public is in no way misled. Prohibiting a firm from listing non-lawyers on its letterhead or business cards in a non-misleading manner would, in our opinion, run

counter to the holdings by the United States Supreme Court in the area of lawyer advertising. See *Bates v. State Bar of Arizona*, 430 U.S. 350 (1977), *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626 (1985), *Shapiro v. Kentucky State Bar*, 108 S.Ct. 1916 (1988).

Furthermore, DR 3-101(A) directs that "[a] lawyer shall not aid a non-lawyer in the unauthorized practice of law." If a lawyer or a law firm undertakes to include non-lawyer employees on letterheads or business cards, that lawyer or law firm remains under the affirmative duty of supervising its employees to insure that they do not engage in any aspect of the practice of law limited by the laws of Ohio to members of the bar.

FOOTNOTE

1. On October 1, 1988, Michigan replaced its Code of Professional Responsibility with the Michigan Rules of Professional Conduct.

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