

Utah Ethics Opinions

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131. USB EAOB Opinion No. 131

Utah State Bar

Ethics Advisory Opinion Committee

Opinion No. 131

Approved May 20, 1993

Issue: May a Utah lawyer include on his letterhead the name of a non-lawyer employee with an indication that he is a certified public accountant (CPA)?

Opinion: An employee non-lawyer, such as a CPA, may be listed on the letterhead of a solo practitioner, partnership or firm so long as the designation is not false or misleading and contains a clear indication of the non-lawyer's status.¹

Discussion: The Rules of Professional Conduct do not specifically address this issue. Rule 7.5 regarding firm names and letterheads states in pertinent part: "A lawyer shall not use the firm name, letterhead or other professional designation that violates Rule 7.1."

Rule 7.1 addresses the issue of communications concerning a lawyer's services and states as follows:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer services. A communication is false or misleading if it:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or

(c) compares the lawyer's services with other lawyer's services, unless the comparison can be factually substantiated.

The comment to Rule 7.1 states in part, "Whatever means are used to make known a lawyer's services, statements about them should be truthful." This is the *sine qua non* regarding communications, whatever the medium, between lawyers and their clients or the public in general.

With regard to a related question, this Committee previously issued Opinion No. 108 on the subject of whether a Utah lawyer who is also a certified public accountant may include the CPA designation on his professional law office letterhead. The Committee in that instance concluded that such a practice would be permissible, stating as follows:

Although formerly there were proscriptions of this practice, these constraints have largely been rendered invalid by the development of permissible attorney advertising under the First Amendment analysis of *Bates v. State Bar of Arizona* [433 U.S. 350 (1977)] and other cases [citing *Shapero v. Kentucky Bar Ass'n*, 486 U.S. 466 (1988)] and by adoption of the current Rules of Professional Conduct for Lawyers.

Opinion No. 108 compared the current rules with superseded disciplinary Rule 2-101(e), which forbade such a practice and stressed that "the foundational guideline is: 'a lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services,'" citing Rule 7.1.

The primary distinction between the subject of Opinion No. 108 and this opinion is that the request in No. 108 was with respect to "public dissemination of information concerning . . . the kind of services a lawyer will undertake."² In this case, the request does not indicate that the lawyer has any expertise whatsoever in accounting, but only wishes to include the name and designation as a CPA of another individual on his letterhead.

As observed in the ABA/BNA Lawyers Manual in Profession Conduct No. 80, "[Q]uestions about the propriety of listing non-lawyer employees on letterheads have often been resolved by allowing the listing so long as it is not false or misleading, and clearly reflects the non-lawyer's status with the firm."³

Other jurisdictions have found that listing non-lawyer employees on legal stationary is in itself a misleading practice and a *per se* violation of Rule 7.1.4

The primary conceptual objection to inclusion of a non-lawyer on law firm letterhead is based on the notion that, since the purpose of letterheads is to inform the public of the names of persons available in the office to provide legal services, by including the name of a non-lawyer-*e.g.*, a CPA-on a letterhead, a client or prospective client could be led to the conclusion that one of the lawyers in the firm is a CPA or that the CPA is a lawyer.

In one specific case in support of this reasoning, it was opined that a CPA may not carry on his own practice from the offices of the law firm while so employed due to the

possibility that the CPA could become a "feeder" to the law practice.⁵ This Michigan opinion involved a non-lawyer CPA who was apparently not a full-time employee of the law firm, and the question does become more complex where such a situation exists.⁶

However, the issue of whether the non-lawyer employee will become a "feeder" to the law firm is relatively unrelated to the propriety of placing the non-lawyer's name on the letterhead. See Rule 5.4, Professional Independence of Lawyers. The former question will not be resolved simply by forbidding linkage in signage and letterhead. The latter question is perceived to be basically one of full and candid disclosure, as is required by Rule 7.1.

In a recent opinion, concluding that it would not be improper to include the name of a non-lawyer accountant (not a CPA) with a proviso that he is an enrolled agent with the IRS, and not a lawyer, the Nassau County [N.Y.] Bar Association Committee on Professional Ethics reasoned that such a practice is permissible if conducted in such a way as not to be deceptive, provided that such employees are clearly described and identified as non-lawyers, and that the information provided is such that it might be of assistance to the public in the process of selecting counsel.⁷

The Committee believes that the better reasoned opinions are those to the effect that a non-lawyer may be included in a law firm's letterhead, but only if the listing: (1) clearly indicates the individual's function and non-lawyer status, (2) is presented in such a way as to avoid any possibility of a "material misrepresentation of fact or law," and (3) does not "omit a fact necessary to make the statement considered as a whole not materially misleading," as required by Rule 7.1(a).

Conclusion: The principle involved is that of full, fair and honest disclosure. The inclusion of a non-lawyer employee on a lawyer's or firm's letterhead is not a *per se* violation of Rule of Professional Conduct 7.1 or 7.5, so long as such an inclusion clearly states that the individual is not a lawyer, provides sufficient information either in the letterhead or body of the letter to insure that the inclusion is not false or misleading, and fully complies with the letter and spirit of Rules 7.1(a) and 7.1(b).

Footnotes

1. This opinion addresses and is confined solely to situations involving full-time employees or those employees having no outside employment or private practice.

2. Official comment to Rule 7.2, Rules of Professional Conduct.

3. Cards, Letterheads, & Firm Names, *Non-Lawyer on*

Letterhead, ABA/BNA Lawyers Manual on Professional Conduct, at 9, 10 (July 19, 1989), citing ABA Informal Opinion No. 89-1527 (Feb. 22, 1989) (listing of law firm's non-lawyer executive director allowed if it shows non-lawyer status and is not false or misleading; listing other non-lawyer support personnel, such as administrators, office managers, administrative assistants and paralegals, is similarly permissible); Connecticut Ethics Opinion No. 85-17 (Nov. 20, 1985) (listing helps eliminate client confusion about the status of employees who speak or correspond with them); Florida Ethics Opinion No. 86-4 (Aug. 1, 1986) (may list names and titles of paralegals and legal assistants); Hawaii Ethics Opinion No. 78-8-19 (July 3, 1984) (may list paralegal or legal assistant provided information is not false, fraudulent, misleading or deceptive); Illinois Ethics Opinion No. 87-1 (Sept. 8, 1987) (non-legal personnel may be listed if clearly identified as such); Mississippi Ethics Opinion No. 93 (June 7, 1984) (may include name of paralegal or other non-legal employee provided non-legal status is clearly indicated); Virginia Ethics Opinion No. 970 (Sept. 30, 1987) (may list name and title of firm's chief investigator so long as listing includes affirmative statement that investigator is not licensed to practice law); Wisconsin Ethics Opinion No. E-85-6 (Oct. 1985) (may list legal assistant's name if the employment is relevant to the lawyer's ability to provide legal services).

4. *Id.*, citing Arizona Ethics Advisory Opinion 82-3 (Feb. 26, 1982) (may not include name and title of legal assistant, and legal assistant may not be provided with separate letterhead with assistant's name and firm's name; there is a possibility for public confusion and potential for non-lawyer employee to engage in unauthorized practice of law); Idaho Ethics Opinion 109 (Nov. 30, 1981) (listing non-lawyers would create misleading impression of partnership between lawyers and non-lawyers); Michigan Ethics Opinion CI-942 (June 7, 1983) (a law firm employing accountant may not place accountant's name on its letterhead or door signs; purpose of letterhead is to inform public of names of persons available in office to provide legal services); Allegheny County [Pa.] Ethics Opinion 1 (Oct. 1981) (may not list legal assistants and paralegals as these titles do not necessarily identify graduates of properly accredited courses of study).

5. Michigan Bar Assoc. Ethics Opinion CI-942 (June 7, 1983).

6. As indicated in the statement of the issue in this Opinion No. 131, the Committee has confined its consideration to situations involving full-time employees or those having no outside private practice or other employment.

7. Nassau County [N.Y.] Bar Assoc. Committee on Professional Ethics, Op. 91-32 (1991); see also Nassau

County [N.Y.] Ethics Opinion 87-14 (1987), provisionally approving the practice of including a paralegal's name on the letterhead.

Rules Cited:

7.1

7.5