

# ADVISORY ETHICS OPINION 79-13

## SYNOPSIS:

The letterhead of a law firm may list certain non-lawyer employees such as paralegals and law clerks wherever the inclusion of such names would not be deceptive and might reasonably be expected to supply information relevant to the selection of counsel.

## OPINION:

Prior to the philosophy as enunciated in the recent decision of Bates v. State Bar of Arizona, 433 U.S. 350, 97 S.Ct. 2691 (1977), the listing of all non-lawyer employees on a lawyer's letterhead had been prohibited.<sup>1</sup> However, the decision in Bates<sup>2</sup>, pertaining to the advertising of legal services, clearly seems to have reversed this trend:

It is at least somewhat incongruous for the opponents of advertising to extol the virtues and altruism of the legal profession at one point, and, at another, to assert that its members will seize the opportunity to mislead and distort. We suspect that, with advertising, most lawyers will behave as they always have: they will abide by their solemn oaths to uphold the integrity and honor of their profession and of the legal system. For every attorney who overreaches through advertising, there will be thousands of others who will be candid and honest and straightforward. And, of course, it will be in the latter's interest as in other cases of misconduct at the bar, to assist in weeding out those few who abuse their trust.<sup>3</sup>

The historic decision, per Justice Blackmun, concluded by affirming the First Amendment rights of the petitioning attorneys:

The constitutional issue in this case is only whether the State may prevent the publication in a newspaper of appellant's truthful advertisement concerning the availability and terms of routine legal services. We rule simply that the flow of such information may not be restrained, and we therefore hold the present application of the disciplinary rule against applicants to be violative of the First Amendment.<sup>4</sup>

The New York State Bar Association, Committee on Professional Responsibility, subsequent to Bates,<sup>5</sup> has recently decided the question at hand. In Opinion #500 (12/6/78 #52-78), that Committee concluded that "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 employees are clearly identified as non-lawyers.

On July 15, 1977, the Vermont Supreme Court also adopted changes in the Code of Professional Responsibility, consistent with the decision of Bates.<sup>6</sup> The Court did, however, offer a note of caution:

These areas present problems too complex to be resolved in this short-term response and problems that will benefit from the consideration of the American Bar Association.<sup>7</sup>

The specific subject of letterheads is dealt with as follows:

- (A) Except as provided in DR 2-101 (D), a lawyer or law firm shall not use professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings or similar professional notices or devices, except that the following may be used if they are in dignified form:
  - (4) A letterhead of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his 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 of deceased and retired members.

It must be emphasized that these letterheads must be in a "dignified" form. As stated in EC 1-1, the integrity of the bar is the "ethical responsibility of every lawyer." Also, EC 9-1, 9-2 state the need to act in a manner that promotes public confidence in

<sup>1</sup> See ABA Inf. 1367 (1967) (paralegals), ABA Inf. 845 (1965) (office managers).

<sup>2</sup> *supra*.

<sup>3</sup> Bates, 97 S.Ct. at 2691.

<sup>4</sup> Bates, 97 S.Ct. at 2709.

<sup>5</sup> *supra*.

<sup>6</sup> *supra*.

<sup>7</sup> Comments to T.12, App. IX

the integrity and efficiency of the legal system and the legal profession. This Committee must reiterate the need to make clear to the public exactly the status of the non-lawyers on the letterhead, and further this Committee must caution that the Vermont Supreme Court has not changed the rule quoted above which may be read to be more restrictive than this Committee's opinion.

**CONCLUSION:**

For the reasons stated, the subject to the qualifications as aforementioned, the question is answered in the affirmative. Lawyers are permitted to include on their letterheads the names of their non-lawyer employees wherever the inclusion of such names would not be deceptive and might reasonably be expected to supply information relevant to the selection of counsel.