

ADVISORY ETHICS OPINION 1999-01

SYNOPSIS:

An attorney may list a non-lawyer nurse or paralegal who is an employee with appropriate credentials on firm letterhead so long as it shows non-lawyer status and is not false or misleading; however, the listing on the firm's letterhead of a non-lawyer nurse, paralegal or another attorney who is an independent contractor to the firm and may hold other employment would appear to mislead the public as to the relationship between the firm and non-lawyer and is prohibited.

FACTS:

An attorney intends to employ several different non-lawyer paralegals and nurses as well as attorneys as employees and as independent contractors on both full-time and part-time bases. The attorney has requested guidance as to whether the firm's letterhead may include these various people in the circumstances enumerated below.

ANALYSIS:

It is fairly well-settled that an attorney's letterhead is covered by the same standard which the Supreme Court has made applicable to attorney advertising: "a lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services."¹ The same standard applies under both the Vermont Code of Professional Responsibility (DR 2-101 and DR 2-102) and the Model Rules (Rules 7.1 and 7.5).²

The names on a firm's letterhead indicate a partnership or association which the public has come to understand carry mutual obligations, responsibilities, and professional standards. For example, "[S]tate and local bar ethics committees are unanimous in their prohibiting lawyers who merely share office space from using the same letterhead."³ Although there is a split in the jurisdictions on interpreting whether the listing on non-lawyer employees (including their status) is false or misleading, we note that for several years now Vermont firms have listed non-lawyer paralegals on their letterheads as such. "A law firm may list a non-lawyer executive director on the letterhead of the firm and on business cards, provided the listing clearly reveals that the executive director is a non-lawyer and is not otherwise false or misleading."⁴

We agree with states such as Connecticut that the explicit identification of such personnel and their identification as non-lawyer employees, on balance, helps clients understand with whom they are communicating at the firm rather than confuses clients on who is a lawyer.⁵ Our opinion here also does not imply any differences with ABA Formal Opinion 90-357 which addressed the separate issue of the "Of Counsel" designation for a lawyer when the relationship with the firm is "close, regular, and personal" and "the use of the title is not otherwise false or misleading."

However, we have not found any authority which has permitted or even suggested that a firm may list independent contractors on its letterhead. In fact, pursuant to DR 2-102(D) and DR 2-101 there is a prohibition on stating or even implying a partnership or association where one does not legally exist, and disciplinary action has been upheld against those violating this prohibition.⁶ Part of the comfort we have in authorizing the listing of non-lawyer employees comes from the overall responsibility the firm acknowledges and bears for such employees. Independent contractors, by definition, do not carry the same attorney or firm responsibility. Furthermore, non-employee/independent contractors have or may have other positions and potential work. As a result, other firms, clients, the public, and the profession would be misled about the independent contractor's relationship with the firm or firms listing him or her on letterhead. With this in mind, we turn to the specific situations presented.

1. An attorney may not list a paralegal, nurse, or an attorney who is working as an independent contractor on firm letterhead.
2. An attorney may list a paralegal or an attorney who is a part-time employee on firm letterhead provided non-lawyers are clearly identified as such, and the listing is not otherwise false or misleading.

¹ See, e.g. *Shapero v. Kentucky Bar Assn.*, 486 U.S. 466 (1988).

² See ABA Informal Opinion 89-1527 (1989).

³ *ABA/BNA Lawyers Manual on Professional Conduct* 81:3004 (1998) (citations omitted).

⁴ ABA Informal Opinion 98-1527.

⁵ See Connecticut Ethics Opinion 85-17 (1985) and ABA Informal Opinion 89-1527.

⁶ *ABA/BNA Lawyer's Manual*, 81:3004 (citations omitted).

3. An attorney may list a non-lawyer nurse who is a full-time or part-time employee with credentials, such as R.N., on firm letterhead provided non-lawyer status is explicit and the listing is not otherwise false or misleading. If the part-time nurse employee also has another full-time job, the attorney should be especially careful that the listing does not mislead anyone into inferring any association between the firm and the full-time employer.