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LISTING OF SUPPORT PERSONNEL NAMES ON LETTERHEAD AND BUSINESS CARDS

Adopted February 26, 1990.

Addendum issued 1995.

Syllabus

A law firm may provide nonlawyer employees with business cards and list such employees' names on its letterhead, provided such business cards and letterhead listings clearly reveal the employee is not a lawyer and the information on such business cards and letterheads is not otherwise false, fraudulent, misleading or deceptive. A law firm providing business cards to nonlawyer employees or placing non-lawyers' names on its letterhead is responsible for the use to which nonlawyer employees put such business cards or letterhead.

Opinion

On August 24, 1974, the Colorado Bar Ethics Committee issued Informal Opinion X. This Informal Opinion stated that it is improper for a law firm to list nonlawyer employees on a professional card or letterhead. Prior to the United States Supreme Court's decision in *Bates v. State Bar of Arizona*, 340 U.S. 350 (1977), the views expressed in Informal Opinion X were the universal standard. The American Bar Association Standing Committee on Ethics and Professional Responsibility (ABA Ethics Committee) issued similar opinions on the subject. [See: ABA Informal Opinion 1000, October 16, 1977 (Staff Investigator); Informal Opinion 845, April 26, 1965 (Office Manager); and Informal Opinion 619, Dec.28, 1962 (Secretary)].

Effective April 1, 1985, the Colorado Supreme Court amended Canon 2 of the Colorado Code of Professional Responsibility (Code) to comply with the holding of *Bates* [14 *The Colorado Lawyer* 67 (Jan. 1986)]. Prior to being amended in 1985, the Code's DR 2-102 contained specific limitations that only the names of lawyers and associates could appear on business cards [DR 2-102(A)(1)] and letterhead [DR 2-102(A)(4)]. In amending Canon 2, the Colorado Supreme Court deleted these sections. Instead, the Court modified DR 2-102(A) to read that a lawyer could not use a business card or letterhead, ". . . if it includes a statement or claim that is false, fraudulent, misleading or deceptive within the meaning of DR 2-101(B) or that violates DR 2-101(C)."

Following *Bates*, the United States Supreme Court further limited the restrictions a state could place on lawyer advertising in the cases of *In re R.M.J.*, 455 U.S. 191 (1982); *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 625 (1985) and *Shapiro v. Kentucky Bar Ass'n*, 100 L.Ed.2d 475 (1988). As a result of these cases, restrictions on lawyer advertising are generally limited to preventing false, fraudulent, misleading or deceptive advertising and face-to-face solicitations. In light of these United States Supreme Court cases, the ABA Ethics Committee withdrew its previous opinions restricting the use of business cards by nonlawyer support personnel and placing the names of such personnel on a firm's letterhead and issued a new opinion permitting such practice [Informal Opinion 89-1527 (Feb. 22, 1989)]. While the ABA Ethics Committee, in issuing Informal Opinion 89-1527, was interpreting the ABA Model Rules of Professional Conduct, it also said, "The listing of nonlawyer support personnel on lawyers' letterheads is not prohibited by these or any other Rules so long as the listing is not false or misleading." The opinion also extended similar reasoning to business cards issued to support personnel. The Colorado Bar Ethics Committee withdrew Informal Opinion X on April 15, 1989, but did not issue a formal opinion permitting such practices.

The Committee has received requests to clarify its position on such practices. The matter was further confused by the issuance of the Guidelines for the Utilization of Legal Assistants (Guidelines) by the Legal Assistants Committee of the Colorado Bar Association in November 1989 [see, "Guidelines for the Utilization of Legal Assistants," 18 *The Colorado Lawyer* 2097 (Nov. 1989)]. Part of those Guidelines provided as follows:

3. A legal assistant may have a business card with the firm name appearing on it so long as the status of the legal assistant is disclosed. However, the name of the legal assistant may not appear on the letterhead of the firm.

While the Guidelines were correct when drafted, delay in the publication of the Guidelines has rendered this provision partially invalid.

Because of the confusion in this area and the increasing requests for clarification, the Colorado Bar Ethics Committee believes that it should issue this Formal Opinion to aid practitioners of law in this state with this problem.

The Committee believes it is permissible under the Colorado Code of Professional Responsibility to list the names of nonlawyer support personnel on a law firm's letterhead and for a law firm to issue business cards to such personnel, so long as the listing or the contents of the letterhead or business card are not false, fraudulent, misleading or deceptive. In assuring themselves that the contents of a letterhead or business card are not false, fraudulent, misleading or deceptive, the listed nonlawyer's status must be made clear to the public.

In addition, attorneys should review with their nonlawyer personnel the ethical use of letterhead and business cards. A lawyer may not avoid his or her ethical responsibility by claiming the violation was the responsibility of a nonlawyer employee. A lawyer is responsible for the ethical conduct of such personnel [DR 3-101(A) and Colorado Ethics Opinion 61 (October 23, 1982)]. In reviewing the uses for which such letterhead and business cards may be employed, lawyers should, at a minimum, review with their nonlawyer personnel the advertising rules in DR 2-101, DR 2-103, DR 2-104 and Colorado Bar Association Ethics Committee Formal Opinion 83 on Lawyer Advertising, Solicitation and Publicity.

Additionally, nonlawyer personnel should be carefully instructed that the Code can be violated by the misuse of letterhead or business cards which would otherwise meet the criteria of this Opinion. To illustrate, if a nonlawyer, in signing a letter with his or her name on the letterhead, does not clearly indicate his or her position in the signature block and the public is thereby misled, the otherwise conforming letterhead will not prevent a violation of the Code. By the same token, if a nonlawyer employee does not make his or her position clear in an interview, the presentation of a business card revealing the employee's true position will not necessarily prevent a violation. Nonlawyer personnel should be instructed that care should always be taken to reveal clearly the true nature of their positions, especially where their names appear on a firm's letterhead or on a business card with the firm's name.

1995 Addendum

The Colorado Rules of Professional Conduct became effective on January 1, 1993, replacing the Code of Professional Responsibility. While the language of the Rules is somewhat different from the Code, the Ethics Committee considers this Opinion to continue to provide guidance to attorneys in this area. Attorneys are cautioned to review Tables A & B: Related Sections in the Colorado Rules of Professional Conduct and The Colorado Code of Professional Responsibility (found in the *Colorado Ethics Handbook*), to update the research contained in this Opinion and to conduct any independent research necessary.

Relevant provisions of the Colorado Rules of Professional Conduct, which should be examined together with this Opinion, are Rules 5.3 (regarding responsibilities for nonlawyer assistants); 7.5(a) (prohibiting use of firm names, letterhead or other professional designation which are false or misleading) and 7.1 (prohibiting a lawyer from making false or misleading communications concerning a lawyer's services). Although the language of Rules 7.5(a) and 7.1 is somewhat different from their predecessors, DR 2-102(A), DR 2-101(B) and DR 2-101(C), the effect of these provisions remains the same. The Rules, like the Code of Professional Responsibility, permit listing of non-lawyer support personnel on firm letterhead and issuing of business cards to such personnel as long as the content of such items is not misleading or false.