

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 90-13

Issued August 17, 1990

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

[Not current-subsequent rule amendments to DR 1-102(A)(4), eff. Dec. 1, 1995, expressing rule in gender neutral language.]

SYLLABUS: Under DR 2-102 (A) (4), a lawyer who devotes a substantial amount of professional time to a client may appear on the client's letterhead and be designated as "general counsel" or similar professional reference. The same lawyer may also sign correspondence using a client's letterhead, with or without being listed on the letterhead provided there is a clear designation of the lawyer's professional status.

OPINION: We have before us your request for an advisory opinion on whether you may sign correspondence on a client's stationery followed by the designation "special counsel" or "of counsel" without being listed at the top of the letterhead. Your letter indicates you devote a substantial amount of professional time to the client and that the client has recently hired a full-time, in-house general counsel.

Disciplinary Rule 2-102 (A) (4) contains the following provision: [a] lawyer or law firm may be designated as 'General Counsel' or by similar professional reference on stationery of a client if he or the firm devotes a substantial amount of professional time in the representation of that client." We believe that a lawyer is permitted to sign correspondence relating to the business of the client using the client's letterhead with or without being listed on the letterhead. As a matter of ethics, a lawyer may be identified with a client only if his or her professional status is clearly indicated. Thus, whether or not he or she is listed on the letterhead, the lawyer may use the client's letterhead only if he or she meets the criteria of DR 2-102 (A) (4).

When indicating professional status a lawyer must scrupulously avoid any misleading titles. Use of the term "of counsel" has traditionally been used by law firms to indicate the status of a lawyer who is neither a partner nor an associate. See, Code of Professional Responsibility, DR 2-102 (A) (4); Board of Commissioners Op. 88-23 (1988). Therefore, "of counsel" is inappropriate when referring to yourself on a client's

letterhead but is an appropriate designation on a law firm's letterhead. The lawyer's status, as designated on a client's letterhead, must clearly indicate the lawyer's position as counsel for the client.

The ABA has held that a lawyer could be designated as counsel on a client's letterhead only when the lawyer performs substantial and continuing legal services in the client's behalf and provided that (1) counsel did not suggest or encourage such listing; (2) the listing was clearly and primarily in the interest of the client; and (3) the client did not exploit the listing of his or her counsel for business or competitive purposes. ABA Committee on Ethics and Professional Responsibility Informal Op. 1231 (1972). In our view, these three criteria apply to the lawyer who wishes to sign correspondence on a client's letterhead.

In conclusion it is our opinion and you are so advised that a lawyer may ethically sign correspondence using a client's letterhead when his or her professional status is clearly indicated and when he or she meets the criteria for being listed on the letterhead under DR 2-102 (A) (4).

This is an informal, non-binding advisory opinion based upon the facts presented and limited to questions arising under the Code of Professional Responsibility.