

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

## **OPINION 2009-5**

Issued June 12, 2009

**SYLLABUS:** A lawyer or law firm may be listed as “General Counsel” or similar reference on the letterhead of a client organization and may use the designation in signing correspondence written on behalf of the client organization if the lawyer or law firm represents the client organization in all or most of the client’s legal matters, devotes a substantial amount of professional time to the client organization, and is given the title by the client organization. A lawyer’s or law firm’s designation as “General Counsel” on the letterhead of a client organization and use of the designation in signing correspondence written on behalf of the client organization is proper under Prof. Cond. Rules 7.5 and 7.1, provided the communication is truthful—not false or misleading or nonverifiable.

**OPINION:** This opinion addresses a question regarding a lawyer’s use of “General Counsel” when representing a client organization.

May a lawyer who devotes substantial professional time to a client organization be listed as “General Counsel” or similar reference on the client’s letterhead and may the lawyer sign correspondence as “General Counsel” to the client organization?

“General Counsel” is a professional designation. “General Counsel” is commonly defined as “1. [a] lawyer or law firm that represents a client in all or most of the client’s legal matters, but that sometimes refers extraordinary matters—such as litigation and intellectual property cases—to other lawyers. 2. The most senior lawyer in a corporation’s legal department, usu. also a corporate officer.” *Black’s Law Dictionary* 374, 75 (8<sup>th</sup> ed. 2004).

The term “General Counsel” does not appear in the Ohio Rules of Professional Conduct, but as a professional designation, its use is governed under Prof. Cond. Rules 7.5 and 7.1.

Prof. Cond. Rule 7.5 states, in part, “[a] lawyer shall not use a *firm* name, letterhead or other professional designation that violates Rule 7.1.”

Prof. Cond. Rule 7.1 states “[a] lawyer shall not make or use a false, misleading, or nonverifiable communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading.”

Applying Prof. Cond. Rules 7.5 and 7.1, a lawyer’s or law firm’s designation as “General Counsel” on the letterhead of a client organization and use of the designation in signing correspondence written on behalf of the client organization is proper provided the communication is truthful—not false, misleading, or nonverifiable. Communication of the “General Counsel” designation is deemed truthful when a lawyer or law firm represents a client organization in all or most of the client’s legal matters, devotes a substantial amount of professional time to the client organization, and has been given the title by the client organization.

It is noted that a lawyer’s or law firm’s use of the professional designation “General Counsel” was proper under DR 2-102(A)(4) of the Ohio Code of Professional Responsibility, which was in effect until superseded by the Ohio Rules of Professional Conduct, effective February 1, 2007. DR 2-102(A)(4) of the Ohio Code of Professional Responsibility stated: “A lawyer or law firm may be designated as ‘General Counsel’ or by similar professional reference on stationery of a client if the lawyer or the firm devotes a substantial amount of professional time in the representation of that client.” Accordingly, in past Advisory Opinion 90-13, the Board advised: “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.”<sup>1</sup>

In conclusion, the Board advises as follows. A lawyer or law firm may be listed as “General Counsel” or similar reference on the letterhead of a client organization and may use the designation in signing correspondence written on behalf of the client organization if the lawyer or law firm represents the client organization in all or most of the client’s legal matters, devotes a substantial amount of professional time to the client organization, and has been given the title by the client organization. A lawyer’s or law firm’s designation as “General Counsel” on the letterhead of a client organization and use of the designation in signing correspondence written on behalf of the client organization is proper under Prof. Cond. Rules 7.5 and 7.1, provided the communication is truthful—not false or misleading or nonverifiable.

**Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or**

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<sup>1</sup> Ohio SupCt, Bd Comm’rs on Grievances & Discipline, Op. 90-13 (1990).

**hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Ohio Rules of Professional Conduct, the Ohio Code of Judicial Conduct, and the Attorney's Oath of Office.**