

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES & DISCIPLINE

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OPINION 2012-2

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Identification of Nonlawyers on Law Firm Letterhead, Websites, and Business Cards

SYLLABUS: A law firm's letterhead and website may list the names of nonlawyer employees if the employees are clearly identified as nonlawyers through the use of job titles or other identifiers that differentiate the lawyers from the nonlawyers. Similarly, a law firm's business cards may bear the names of nonlawyer employees if the cards include job titles or other language indicating the employee is not licensed to practice law. Advisory Opinion 89-16 is withdrawn.

QUESTION PRESENTED: May law firm letterhead and business cards include the names of nonlawyer employees?

APPLICABLE RULES: Rules 7.1 and 7.5 of the Ohio Rules of Professional Conduct

OPINION: The Board has been asked to revisit 23-year-old Advisory Opinion 89-16. In that opinion, the Board considered whether the names of nonlawyer employees may be included on law firm letterhead and business cards. Relying on two informal opinions of the American Bar Association (ABA), the Board found that nonlawyer law firm employees could be named on firm business cards if titles and language indicating the employee's nonlawyer status were also printed on the card. Ohio Sup. Ct., Bd. of Comm'rs on Grievances and Discipline, Op. 89-16 (June 16, 1989), citing ABA Commt. on Ethics and Prof'l Responsibility, Informal Op. 1185 (1971) and Informal Op. 1367 (1976).

Although the question presented to the Board is limited to Opinion 89-16, which only addresses letterhead and business cards, the Board notes that law

firm websites are now a primary method of communicating with clients, prospective clients, and the public. This was not the case in 1989 when the Board issued Opinion 89-16. Accordingly, the Board will expand its consideration of a law firm's letterhead employee listings to law firm websites containing such listings.

The Board viewed letterhead differently from business cards in Opinion 89-16. Although another ABA informal opinion stated that law firms could list nonlawyers on firm letterhead, the Board concluded that the inclusion of nonlawyers on letterhead was prohibited in Ohio. Op. 89-16 at 2; *contra* ABA Commt. on Ethics and Prof'l Responsibility, Informal Op. 1527 (1989). The Board determined that the ABA opinion interpreted the Model Rules of Professional Conduct (Model Rules), and because the Supreme Court of Ohio (Court) had not adopted the Model Rules at the time, the Board found it could not follow the ABA's approach. Op. 89-16 at 1-2.

At the time of Opinion 89-16, the former Code of Professional Responsibility (Code), and in particular DR 2-102(A)(4), governed the content of law firm letterhead. As summarized by the Board in Opinion 89-16, DR 2-102(A)(4) allowed law firm letterhead to include "the name of the law firm, names of members and associates, and the names and dates relating to deceased and retired partners." *Id.* Interpreting DR 2-102(A)(4) as an "exhaustive list," the Board concluded that designating nonlawyer employees on law firm letterhead violated DR 2-102(A)(4).

The Court repealed the Code in its entirety effective February 1, 2007, and adopted the Ohio Rules of Professional Conduct (Ohio Rules). The Ohio Rules are based in large part on the Model Rules. Law firm¹ letterhead must now comply with Prof.Cond.R. 7.5(a), which states that "[a] lawyer shall not use a firm name, letterhead or other professional designation that violates [Prof.Cond.R. 7.1]." Prof.Cond.R. 7.1, which is referenced in Prof.Cond.R. 7.5(a), contains the general provision applicable to all communications concerning a lawyer or the lawyer's services. Prof.Cond.R. 7.1 states as follows:

¹ In this opinion, the Board intends "law firm" to have the same meaning as in Prof.Cond.R. 1.0: "a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law; or lawyers employed in a private or public legal aid or public defender organization, a legal services organization, or the legal department of a corporation or other organization."

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.

Reading Prof.Cond.R. 7.1 and 7.5(a) together, the current standard is that law firm letterhead and websites cannot be false or misleading, or contain a nonverifiable communication about a lawyer or the lawyer's services. The only reference to nonlawyers in these rules appears in comment [1] to Prof.Cond.R. 7.5, which states that it is misleading to use the name of a nonlawyer in a law firm name. Neither Prof.Cond.R. 7.1 nor Prof.Cond.R. 7.5(a), however, prohibit the use of nonlawyers' names on law firm letterhead or website employee listings. In fact, the "exhaustive list" contained in former DR 2-102(A)(4) and relied upon by the Board in Opinion 89-16 does not appear in the Ohio Rules. It is now the Board's view that law firm letterhead and websites may list the names of nonlawyer employees if the use of the names is not a false, misleading, or nonverifiable communication.²

In order for law firm letterhead and website employee listings not to be false or misleading or contain nonverifiable information, a person's nonlawyer status must be clearly delineated. See Bennett, Cohen & Whittaker, *Annotated Model Rules of Professional Conduct*, 569 (7th Ed. 2011). This may be accomplished through the use of titles following the names on the letterhead or website that do not cause confusion about a law firm employee's ability to practice law. Examples of such titles include "paralegal," "legal assistant," "law clerk," or "office administrator." Another technique to further designate nonlegal staff on law firm letterhead is to list the lawyers on one side of the letterhead and the nonlawyers on the other side with the appropriate titles or an explanation. On law firm websites, greater creativity is possible and nonlawyers may be depicted on separate web pages or set apart visually with graphics and appropriate

² A number of states have issued ethics opinions indicating that law firm letterhead may list the names of nonlawyers. See State Bar of Ariz., Commt. on Rules of Prof'l Conduct, Op. 90-03 (Mar. 16, 1990); Conn. Bar Assn., Commt. on Prof'l Ethics, Op. 85-17 (Nov. 11, 1985); Fla. State Bar Assn., Commt. on Prof'l Ethics, Op. 86-4 (Aug. 1, 1986); Haw. Sup. Ct., Office of Disciplinary Counsel, Op. 78-8-19 (July 3, 1984); Ill. St. Bar Assn., Op. 87-01 (Sept. 8, 1987); State Bar of Mich., Standing Commt. on Prof'l and Judicial Ethics, Op. RI-34 (Oct. 25, 1989); Miss. State Bar, Op. No. 93 (June 7, 1984); N.J. Sup. Ct., Commt. on Atty. Advertising, Op. 16 (Jan. 24, 1994); N.C. State Bar, RPC 126 (Apr. 17, 1992); Pa. Bar Assn. Commt. on Legal Ethics and Prof'l Responsibility, Op. 98-75 (Dec. 4, 1998); S.C. Bar Ethics Adv. Commt., Op. 05-19 (Oct. 21, 2005); Utah State Bar, Ethics Adv. Commt., Op. No. 131 (May 20, 1993); Va. State Bar, Op. 970 (Sept. 30, 1987); State Bar of Wis., Commt. on Prof. Ethics, Op. E-85-6 (Oct. 1985).

descriptions. A further option would be to identify the firm's nonlawyers with an asterisk and an indication on the letterhead or website that the asterisk signifies employees who are not lawyers. However a law firm chooses to identify nonlawyer employees on the firm's letterhead or website, it must be done in such a way that is not a false, misleading, or nonverifiable communication under Prof.Cond.R. 7.1. Done correctly, law firm letterhead and websites that name nonlawyer employees enhance service to clients, prospective clients, and the public. As stated by the ABA, "[t]he listing of support personnel, such as the law firm administrator or office manager, administrative assistants, paralegals or others, appropriately designated may furnish useful information to the public in determining whether to engage the firm and in learning the status of members of the support staff with whom they have contact." ABA Informal Opinion 89-1527 at 1.

Consistent with allowing law firms to list appropriately-designated nonlawyer employees on firm letterhead and websites, the Board reiterates its position in Opinion 89-16 that firm business cards may identify nonlawyer employees. Under Prof.Cond.R. 5.3, lawyers must make "reasonable efforts to ensure" that nonlawyers they employ, retain, or associate with engage in conduct that is "compatible with the professional obligations of the lawyer." Like firm letterhead and websites, then, nonlawyer business cards must comply with Prof.Cond.R. 7.1 and 7.5(a) and cannot be false or misleading or contain nonverifiable information. It follows that the business cards of a law firm's nonlawyer employees have to include the employee's title or other explanation of their role in the firm. Such business cards shall unequivocally communicate that the person is not a lawyer.

CONCLUSION: The Ohio Rules of Professional Conduct allow law firms to include the names of nonlawyer employees on the firm's letterhead, website, and business cards. However, to avoid being a false, misleading, or nonverifiable communication under Prof.Cond.R. 7.1 and 7.5(a), letterhead, websites, and business cards must clearly differentiate the lawyers from the nonlawyers. The nonlawyers may be identified in a variety of ways, including through the use of job titles or other explanation of the person's role in the firm, spacing on the letterhead, visual techniques on the website, or typographical symbols with accompanying explanations.

Advisory Opinion 89-16 is withdrawn.

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