

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 94-3

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Withdrawn by Adv. 2018-6

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

SYLLABUS: It is proper for a lawyer admitted to the state bar, who is not engaged in the practice of law but who is engaged in another business or profession, to indicate the law degree in the advertisement of the other profession or business if permitted by the other profession or business.

It is proper for a lawyer admitted to the state bar, who is engaged only in the practice of law but who holds other professional degrees or licenses, to indicate the other professional degrees or licenses in the advertisement of the law practice.

It is proper for a lawyer admitted to the state bar, who is engaged both in the practice of law and another profession or business, to indicate the law degree in the advertisement of the other profession or business if permitted by the other profession or business.

It is not proper under Disciplinary Rule 2-102 (E) for a lawyer admitted to the state bar, who is engaged both in the practice of law and another profession or business, to indicate the other professional degrees or licenses on the law practice letterhead, office sign, or professional card, but such indication on other forms of legal advertisement would not violate the rule.

OPINION: This opinion addresses an attorney's use of earned degrees and licenses, when the attorney holds both a law degree and a degree or license in another profession. This opinion does not address advertisement of certification in a field of law. The questions are set forth below.

1. Is it proper for a lawyer admitted to the state bar, who is not engaged in the practice of law but who is engaged in another business or profession, to indicate the law degree in the advertisement of the other profession or business?

2. Is it proper for a lawyer admitted to the state bar, who is engaged only in the practice of law but who holds other professional degrees or licenses, to indicate the other professional degrees or licenses in the advertisement of the law practice?
3. Is it proper for a lawyer admitted to the state bar, who is engaged both in the practice of law and another profession or business, to indicate the law degree in the advertisement of the other profession or business?
4. Is it proper for a lawyer admitted to the state bar, who is engaged both in the practice of law and another profession or business, to indicate the other professional degrees or licenses in the advertisement of the law practice?

Today, it is not unusual for an attorney to hold a degree or license in law and another profession. Nor, is it unusual for an attorney to advertise his or her legal services, following the landmark decision in Bates v. State Bar of Arizona, 433 U.S. 350 (1977) in which the Supreme Court held that advertising by attorneys is protected speech under the First Amendment. Further, Ethical Consideration 2-9 of the Ohio Code of Professional Responsibility states that "the Disciplinary Rules recognize the value of giving assistance in the selection process through forms of advertising."

To answer the questions raised, the Board first refers to the disciplinary rules that govern publicity.

DR 2-101(A) A lawyer shall not, on his or her own behalf or that of a partner, associate, or other lawyer affiliated with the lawyer or the lawyer's firm, use, or participate in the use of, any form of public communication, including direct mail solicitation that:

- (1) Contains any false, fraudulent, misleading, deceptive, self-laudatory, or unfair statement;

DR 2-101 (D) The following information with regard to lawyers, law firms, or members of firms will be presumed to be informational rather than solely promotional or self-laudatory, and acceptable for dissemination under these rules, if accurate and presented in a dignified manner.

(5) Schools attended, with dates of graduation and degrees conferred;

(9) Technical and professional licenses;

DR 2-102 (E) A lawyer who is engaged both in the practice of law and another profession or business shall not so indicate on his [her] letterhead, office sign, or professional card, nor shall he [she] identify himself [herself] as a lawyer in any publication in connection with his [her] other profession or business.

DR 2-102 (F) Nothing contained herein shall prohibit a lawyer from using or permitting the use, in connection with his [her] name, of an earned degree or title derived therefrom indicating his [her] training in the law.

To summarize these rules, Disciplinary Rule 2-101(A), prohibits false, fraudulent, misleading, deceptive, self-laudatory, or unfair statements by a lawyer in any form of public communication. Disciplinary Rule 2-102 (D) affirmatively states that degrees conferred and technical or professional licenses are presumed to be informational and not self-laudatory, so long as they are accurate and presented in a dignified manner. Disciplinary Rule 2-102 (E) recognizes that a lawyer may engage in both the practice of law and another profession or business, but restricts the communications. Disciplinary Rule 2-102 (F) qualifies the restriction in DR 2-102 (E) by permitting the use of an earned degree or title derived therefrom indicating training in the law.

In addition to the above cited rules, the Code of Professional Responsibility contains rules specific to professional notices, letterheads, and office signs. Disciplinary Rules 2-102 (A) (1) through (4) are set forth below.

DR 2-102(A) A lawyer or law firm may use or participate in the use of professional cards, professional announcement cards, office signs, letterheads or similar professional notices or devices, that are in dignified form and comply with the following:

- (1) A professional card of a lawyer identifying him (her) by name and as a lawyer and giving his [her] addresses, telephone numbers, the name of his [her] law firm, and any information permitted under DR 2-105. A professional card of a law firm may also give the names of members and associates. Such cards may be used for identification.
- (2) A brief professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional offices of a lawyer or law firm. It shall not state the nature of the practice except as permitted under DR 2-105.
- (3) A sign on or near the door of the office and in the building directory identifying the law office. The sign shall not state the nature of the practice, except as permitted under DR 2-105.
- (4) A letterhead of a lawyer identifying him [her] by name and as a lawyer, and giving his [her] addresses, telephone numbers, the name of his [her] law firm, associates, and any information permitted under DR 2-105. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer may be designated "Of Counsel" on a letterhead if he [she] has a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as "General Counsel" or by similar professional reference on stationery of a client if he [she] or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.

Question 1

Is it proper for a lawyer admitted to the state bar, who is not engaged in the practice of law but who is engaged in another business or profession, to indicate the law degree in the advertisement of the other profession or business?

For the reasons stated below, the Board advises that it is proper for a lawyer admitted to the state bar, who is not engaged in the practice of law but who is engaged in another business or profession, to indicate the law degree in the advertisement of the other profession or business if permitted by the other profession or business.

First, the restrictions within Disciplinary Rule 2-102 (E) would not apply since the attorney is not engaging in both the practice of law and another profession. Second, the Code gives express permission in Disciplinary Rule 2-102 (F) that nothing contained within the rule prohibits an attorney from using, in connection with the attorney's name, an earned degree indicating training in the law. Third, another state has expressed a related view. A Maryland ethics committee has advised that a lawyer who is a C.P.A. employed by an accounting firm for accounting work only and is not practicing law can indicate "C.P.A., J.D." on business cards so long as such advertising complies with the rules and clients are not misled that the accounting advice is legal advice. Maryland State Bar Ass'n, Op. 93-1 (1992).

Question 2

Is it proper for a lawyer admitted to the state bar, who is engaged only in the practice of law but who holds other professional degrees or licenses, to indicate the other professional degrees or licenses in the advertisement of the law practice?

For the reasons stated below, this Board advises that it is proper for a lawyer admitted to the state bar, who is engaged only in the practice of law but who holds other professional degrees or licenses, to indicate the other professional degrees or licenses in the advertisement of the law practice.

First, the restrictions within Disciplinary Rule 2-102 (E) would not apply since the attorney is not engaging in both the practice of law and another profession. Second, under Disciplinary Rule 2-101 (D) (5) and (9) degrees conferred, and technical and professional licenses are presumed to be informational and acceptable for dissemination under the publicity rules, if accurate and presented in a dignified manner. Third, another state ethics committee has offered similar advice. The ethics committee of the Bar Association of Nassau County advised that a lawyer who is also a certified public accountant may include "C.P.A." on legal stationery. Bar Ass'n of Nassau County, Op. 89-32 (1989).

Fourth, the specific rules regarding legal professional notices, letterheads, and office signs, DR 2-102 (A) (1) through (4), do not expressly permit or exclude such information. Further, the Supreme Court in Peel v. Attorney Registration and Disciplinary Commission of Illinois, 496 U.S. 91 (1990), held that an attorney's statement on his letterhead regarding certification as a civil trial specialist by the National Board of Trial Advocacy was protected by the First Amendment. Although Peel involves letterhead statements of certification as a specialist in an area of law, rather than letterhead statements of non-legal degrees or titles, it indicates that a state's interest must be sufficient to justify a categorical ban on facts that are true and verifiable. See also, Bates v. State Bar of Arizona, 433 U.S. 350 (1977); Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447 (1978); In re Primus, 436 U.S. 412 (1978); In re R.M.J., 455 U.S. 191 (1982); Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio 471 U.S. 626 (1985); Shapero v. Kentucky Bar Ass'n, 486 U.S. 466 (1988).

Question 3

Is it proper for a lawyer admitted to the state bar, who is engaged both in the practice of law and another profession or business, to indicate the law degree in the advertisement of the other profession or business?

For the reasons stated below, the Board advises that it is proper for a lawyer admitted to the state bar, who is engaged both in the practice of law and another profession or business, to indicate the law degree in the advertisement of the other profession or business if permitted by the other profession or business.

First, although Disciplinary Rule 2-102 (E) states that a lawyer who is engaged both in the practice of law and another profession or business shall not identify himself as a lawyer in any publication in connection with the other profession or business, the restriction is qualified by the statement of Disciplinary Rule 2-102 (F) that "[n]othing contained herein shall prohibit a lawyer from using or permitting the use, in connection with his [her] name, of an earned degree or title derived therefrom indicating his [her] training in the law." Second, another state has expressed a related view. An Alabama committee advised that a lawyer engaged in private practice and employed by a computer software company could include the title "attorney at law" in his advertising and letterhead relating to the computer software company. Alabama State Bar, Op. 87-105 (1987).

Question 4

Is it proper for a lawyer admitted to the state bar, who is engaged both in the practice of law and another profession or business, to indicate the other professional degrees or licenses in the advertisement of the law practice?

For the reasons stated below, the Board advises that it is not proper under Disciplinary Rule 2-102 (E) for a lawyer admitted to the state bar, who is engaged both in the practice of law and another profession or business, to indicate the other professional degrees or licenses on the law practice letterhead, office sign, or professional card, but such indication on other forms of legal advertisement would not violate the rule.

First, Disciplinary Rule 2-102 (E) applies to lawyers who are engaged both in the practice of law and another profession or business. This rule expressly prohibits the indication of the other professional degree on the law practice letterhead, office sign, or professional card. The Board reads the rule narrowly. The prohibition does not by its language extend beyond letterhead, office sign, or professional card. This reading, is compatible with past Opinion 92-12, wherein the Board advised that it is not improper under DR 2-102 (E) for an attorney engaged in both the practice of law and farming to place a legal advertisement in a trade magazine for farmers to truthfully state that the attorney had twenty years experience as a farmer. The Board distinguished that the legal advertisement was intended to generate only legal business, and was not an advertisement to generate both legal and farming business. Id.

Second, the Board acknowledges that Disciplinary Rule 2-102 (E) "was adopted at a time when other Disciplinary Rules and the predominant sentiment within the legal profession made it impermissible for lawyers to advertise." ABA Committee on Ethics and Professional Responsibility Informal Op. 1422 (1978). The Board further acknowledges that DR 2-102 (E) on which Ohio's rule was based was deleted from the ABA Model Code of Professional Responsibility in 1980. See ABA Committee on Ethics and Professional Responsibility, Informal Op. 83-1497 (1983). However, the rule exists in Ohio and thus guides our conclusion as to the issue raised.

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 Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney's Oath of Office.