

NEW YORK STATE BAR ASSOCIATION

Committee on Professional Ethics

Opinion 637 - 12/4/92 (16-92, 19-92)

Overrules: N.Y. State 200 (1971) and 284 (1973) (in part)

Topic: Letterhead: Former judge; additional jurisdictions in which lawyer is licensed to practice.

Digest: Lawyer may list former judicial position and jurisdictions in which lawyer is licensed to practice on letterhead and cards.

Code: DR 2-101, 2-102, 9-101.

QUESTIONS

(1) May a lawyer's letterhead state the judicial office from which the lawyer retired before returning to private practice?

(2) Where a lawyer employed by a New York law firm is licensed to practice law in another jurisdiction, may that fact be indicated in listing the individual on the firm's letterhead or on the individual's professional card?

OPINION

The two questions stated above, each submitted by a different lawyer, prompt the Committee to revisit the basic ethical principles that govern professional letterheads.

Lawyers' letterheads, professional cards, and the like are forms of publicity or advertising. DR 2-102(A) of the Code provides: "A lawyer or law firm may use professional cards, professional announcement cards, office signs, letterheads or similar professional notices or devices, provided the same do not violate any statute or court rule, and are in accordance with DR 2-101...."¹ DR 2-101(A) prohibits

¹ The Code of Professional Responsibility that became effective in New York in 1970 broadly prohibited most forms of advertising by lawyers. Therefore, the predecessor of DR 2-102(A), enacted as part of the 1970 Code, strictly limited the items permitted on a lawyer's letterhead and any information not expressly authorized for inclusion on a lawyer's letterhead was prohibited. See N.Y. State 200 (1971). In the landmark decision, *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), the Supreme Court held that advertising by lawyers, like other so-called commercial speech, was entitled to First Amendment protection. Therefore, while states could adopt measures

communications that are "false, deceptive, misleading or cast reflection on the legal profession as a whole," and DR 2-101(B) prohibits "puffery, self-laudation, claims regarding the quality of the lawyers' legal services, or claims that cannot be measured or verified." DR 2-101(C) and DR 2-102(1)-(4) list various types of information that are expressly permitted in various forms of lawyer advertising, provided that dissemination of the information complies with DR 2-101(A) and (B). Finally, DR 2-101(D) states:

Advertising and publicity shall be designed to educate the public to an awareness of legal needs and to provide information relevant to the selection of the most appropriate counsel. Information other than that specifically authorized in subdivision (C) of this section that is consistent with these purposes may be disseminated providing that it does not violate any other provisions of this Rule.

Hence, the Code's list of expressly permitted information is not intended to be exclusive.

Therefore, the answers to the two questions stated above, and many similar ones, turn on whether the disseminated information is false, deceptive, or misleading, either inherently or in the circumstances. N.Y. State 487 (1978); *see, e.g., Bates v. State Bar*, 433 U.S. 350 (1977); *von Wiegen v. Committee on Professional Standards*, 63 N.Y.2d 163, 481 N.Y.S.2d 40, 470 N.E.2d 838 (1984). This Committee does not opine on the accuracy, completeness, or verification of statements contained in particular communications by lawyers. A lawyer issuing such communications must take care that a statement does not violate of DR 2-101 or any other provision of the Code.

Former Judicial Office

In the first inquiry, a firm asks whether it may indicate that a lawyer in the law firm who is a retired Justice of the Supreme Court is a "Retired Justice of the Supreme Court" in connection with listing the individual's name on the firm's letterhead.

In N.Y. State 200 (1971) and N.Y. State 284 (1973), this Committee stated that a law firm's letterhead may not indicate that a lawyer in the firm was formerly a judge. These opinions were based on the pre-*Bates* version of DR 2-102(A), which permitted only specified types of information on a lawyer's letterhead. A lawyer's former judicial position was not within the authorized items. DR 2-101(C)(1) of the current Code, however, expressly allows a lawyer to disseminate information as to public offices held in publicity materials generally, provided it is not otherwise prohibited under DR 2-101(A) or (B). Nothing in the Code prohibits listing a lawyer's prior judicial office, on a

to curb false and misleading advertising by lawyers, states were no longer free to prohibit truthful advertising by lawyers. Following *Bates*, New York revised the Code's provisions governing lawyer advertising in 1978. *See* N.Y. State 487 (1978) (discussion of post *Bates* changes to the Code). DR 2-102(A) of the Code as currently in effect in New York reflects the more permissive approach to lawyer advertising that *Bates* requires.

letterhead or elsewhere, in a truthful and nonmisleading manner. Therefore, we overrule N.Y. State 200 and N.Y. State 284 (to the extent it states a lawyer's former judicial position cannot be listed on a letterhead).

We note, however, that if a lawyer is a retired Justice of the Supreme Court of New York, the statement "Retired Justice of the Supreme Court," without the clarification that the court is the Supreme Court of the State of New York, may be "misleading" and thus prohibited under DR 2-101(A).

DC 9-101(C) states, "A lawyer shall not state or imply that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official." We caution that there may be circumstances under which a representation regarding a lawyer's former judgeship may lead a client to infer that the lawyer could improperly influence a court. Absent such additional circumstances, however, we believe that the mere listing on letterhead of a lawyer's former judicial position would not reasonably warrant such an inference.

Admission To Practice in Other Jurisdictions

In the second inquiry, a New York law firm with no out-of-state office includes two lawyers who, in addition to being members of the New York bar, are each licensed to practice law in another state.² The firm asks whether membership in another bar may be indicated in listing these lawyers on the firm's letterhead and on their business cards with a phrase like "Also admitted in _____."³

We conclude that a lawyer who is admitted to practice law in another state may indicate this fact on a letterhead or card. DR 2-101(C)(1) permits the inclusion of "dates of admission to any bar" in lawyer publicity. Even without this provision, there is nothing inherently false or misleading in truthfully identifying the jurisdictions in which a lawyer is licensed to practice law. See N.Y. State 434 (1976).

It is possible, of course, that a prospective client may place undue weight upon a lawyer's admission to multiple bars, and that a lawyer with multiple admissions may be no more qualified to handle a particular matter, or matters in general, than a lawyer who

² According to the inquiry, the additional state in which one lawyer is licensed imposes no requirement to practice law in the state other than admission to the bar. The additional state in which the other lawyer is licensed requires that a lawyer maintain an office in the state in order to practice law there. Whether the latter restriction is constitutional is a question of law beyond the scope of the Committee's jurisdiction. See *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985); *Frazier v. Heebe*, 482 U.S. 641 (1987).

³ Unless qualified, listing a lawyer's name on a firm's letterhead is an implicit representation that the lawyer is licensed to practice law in the jurisdiction of the home office or the office shown on the letterhead. Therefore, if the firm lists a lawyer who is not licensed to practice law in that jurisdiction, it must clearly state the jurisdictional limitations on the lawyer's practice. DR 2-102(D); e.g., *New York Criminal & Civil Courts Bar Ass'n v. Jacoby*, 61 N.Y.2d 130, 136, 472 N.Y.5.2d 890, 894, 460 N.E.2d 1325 (1984); see N.Y. State 434 (1976).

is admitted in only one state. Similarly, a prospective client may place undue emphasis on a lawyer's having been educated in a particular school or having attained a certain age. This does not render otherwise truthful information misleading.⁴

CONCLUSION

For the reasons stated, the two questions posed are answered in the affirmative.

⁴ We reach this conclusion despite three informal opinions by the American Bar Association Committee on Professional Responsibility that hold to the contrary. ABA Inf. 1037 (1968); ABA Inf. 956 (1966); ABA Inf. 821 (1965). These informal opinions were rendered before *Bates* and the *Bates* amendments to the Code, at a time when advertising by lawyers was both unlawful and unethical. Their holding was based on the impropriety of advertising by lawyers. We decline to follow these informal opinions.