

NEW YORK STATE BAR ASSOCIATION

Committee on Professional Ethics

Opinion 640 -12/7/92 (54-92)

Topic: Paralegal titles

Digest: Titles of paralegals employed by lawyers may not be false or misleading.

Code: DR 1-104(A)(2); 2-101; 2-102(A); 2-105(B)

QUESTION

May nonlawyer paralegals employed by a lawyer use the title (1) Senior Paralegal or (2) Paralegal Coordinator, Legal Associate, Public Benefits Advocate, Legal Advocate, Family Law Advocate, Housing Law Advocate, Disability Benefits Advocate or Public Benefits Specialist?

OPINION

DR 1-104(A)(2) holds a lawyer responsible for the lawyer's nonlawyer employees who violate a disciplinary rule if the lawyer knows or should have known of the conduct and failed to take reasonable remedial action. Accordingly, the manner in which nonlawyer employees including paralegals hold themselves out to the public is the responsibility of the employer lawyer.

The contents of professional notices, letterheads, publicity, advertising and the like are governed by DR 2-101(A) and (D) and DR 2-102, as well as *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977) and its progeny. We join with Indiana, Kansas and Texas in holding that the employing lawyer is responsible to insure that the content of the business cards of the lawyer's paralegals meet the same standards as those applied to lawyer advertising.¹

The listing of paralegals and their services on business cards and letterheads provides the public with information of the type specified in DR 2-101(D). Thus, the primary concern is to insure that the listing is not false, deceptive or misleading as proscribed by DR 2-101(A). In N.Y. State 500 (1978),

¹ Ind. Op. 1984-8 (undated)(BNA 801:3308); Kan. Op. 85-4 (1985) (BNA 801:3820); Texas Op. 403 (undated)(BNA 801:8302).

this Committee opined that if it was made clear that the employee was not a lawyer, the practice of listing nonlawyers, including paralegals, on the firm's letterhead was permissible.² The term "paralegal" is sufficient without further qualification to make clear the employee's nonlawyer status. N.Y. State 500 (1978). A paralegal may use a business card that lists the name of the law firm, the name of the paralegal and a designation of the paralegal's nonlawyer status. N.Y. County 673 (1989). As that Committee noted, paralegals hold an important position in the efficient delivery of legal services by all types of organizations including legal services offices. *See also* ABA Inf. 89-1527 (1989).³

Based upon the foregoing, the inquiry is largely whether the various titles clearly demonstrate that the paralegal is not an attorney. One of the titles is clearly permissible in that it uses the word "paralegal." The term "Senior Paralegal" unambiguously conveys that the employee is a paralegal. The term "Paralegal Coordinator," however, is ambiguous as it is not clear whether the coordinator is a paralegal. The person may be an attorney coordinating the firm's paralegals. Accordingly, the term "Paralegal Coordinator" may not be used unless the letterhead, business card or other listing makes it clear that either the person is a nonlawyer or is responsible only for the administration of the paralegals and is not responsible for the professional practice. *See* ABA Inf. 89-1527 (1989).

The title "Legal Associate" is clearly impermissible. The term "associate" is applied regularly with respect to lawyers and generally connotes a nonpartner attorney in a law firm. *See* ABA 90-357 (1990) and ABA 84-351 (1984). The public would in all likelihood be confused by use of the term "Legal Associate" if listed as a paralegal's only title. The term "Public Benefits Specialist" also presents the likelihood of confusion. DR 2-105(B) allows an attorney to hold himself out as a specialist in a particular area of the law, if he or she has been so certified by an authority with jurisdiction under New York law under the subject of specialization. New York to date has not implemented the specialization provision. The use of the term by an attorney, *a fortiori* by a paralegal, would be misleading. N. Y. State 487 (1978).

The terms "Legal Advocate," "Family Law Advocate" and "Housing Law Advocate" present the same issue. Although few lawyers in the United States

² Although the opinion was based on the predecessors of the existing DR 2-101 and DR 2-102, there is no significant change in the current provisions that would lead to a different result.

³ The terms "Staff Investigator," "Office Manager" and "Secretary" were there authorized for use by a nonlawyer for inclusion on a firm's letterhead, but the term "Executive Director" was found to be ambiguous and therefore prohibited unless the letterhead, business card or other listing makes it clear that either the person is a nonlawyer or is responsible only for the administration of the law office and is not responsible for the professional practice.

refer to their professional title as "advocate, " the Spanish word for a lawyer is "abogado," and a significant segment of the U. S. population is Spanish speaking. The risk of confusion is present and the policy behind the proscription not to mislead the public requires at the very least that ambiguous language be clarified. The terms "Disability Benefits Advocate" and "Public Rights Advocate" are only slightly less ambiguous, as they do not contain the term "legal" or "law" within them. Nevertheless, they retain the potential for confusion found in the other "advocate" titles and, therefore, are misleading. A layperson could believe that a person who is a "Disability Advocate" or "Public Benefits Advocate" is in fact a lawyer.

CONCLUSION

For the foregoing reasons, the first question is answered in the affirmative and the second question is answered in the negative .

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