



Committee on Professional Ethics

Opinion 851 (1/19/11)

Topic: Using a law firm photograph in a newspaper advertisement.

Digest: An advertisement for a law firm may feature a photograph with non-lawyer employees of the firm provided that the advertisement, viewed as a whole, is not misleading about the size of the firm, its ethnic or gender diversity, or whether those pictured are lawyers.

Rule: 7.1

QUESTION

1. May an advertisement for a law firm feature a photograph of the entire firm, including non-lawyer staff such as paralegals and secretaries?

OPINION

2. Rule 7.1(a) of the Rules of Professional Conduct states that “[a] lawyer or law firm shall not use or disseminate or participate in the use or dissemination of any advertisement that: (1) contains statements or claims that are false, deceptive or misleading; or (2) violates a Rule.”

3. A photograph in a law firm’s advertisement makes “statements or claims” within the meaning of Rule 7.1(a). The issue before us is whether a photograph of a law firm that includes non-lawyers such as paralegals and secretaries would violate Rule 7.1 by creating a misimpression about the size of the firm, the ethnic or gender diversity of its personnel, or whether all those appearing in the photograph are lawyers.

4. This Committee’s prior opinions state that, when a law firm holds a non-lawyer out to the public, the firm must identify the non-lawyer as such to avoid confusing or misleading the public. For instance, we have opined that the name of a non-lawyer may appear on law firm letterhead as long as the letterhead includes appropriate disclosure of the non-lawyer’s professional status. See N.Y. State 500 (1978) (“While non-lawyer status will no longer preclude the use of a person’s name on a firm’s letterhead, his name should be accompanied by language that makes clear his non-lawyer status.”). Similarly, a law firm may permit a paralegal to use a business card with the law firm’s

name as long as the card identifies the paralegal as a non-lawyer. See N.Y. State 640 (1992) (when a law firm lists a paralegal on a letterhead or business card “the primary concern is to insure that the listing is not false, deceptive or misleading”). Each of these prior opinions interpreted DR 2-101, the predecessor of Rule 7.1, but the principles are the same. See also ABA Inf. Opinion 89-1527 (“The listing of nonlawyer support personnel on lawyers’ letterheads is not prohibited . . . so long as the listing is not false or misleading. In order to avoid being misleading, the listing must make it clear that the support personnel who are listed are not lawyers.”).

5. The Connecticut Bar Association’s Committee on Professional Ethics addressed a similar question and concluded that an advertisement containing a photograph of a firm’s two lawyers and the firm’s paralegals would not violate that state’s ethics rules as long as the “proposed advertisement makes it clear that [the] paralegals are not lawyers or otherwise competent to practice law (*i.e.*, they are staff or assistants).” Connecticut Inf. Opinion 92-27.

6. We agree with Connecticut’s approach, and we conclude here that an advertisement containing a photograph of a law firm is ethically permissible if the photograph, viewed in the context of the advertisement as a whole, is not misleading. One way to ensure that a firm photograph including non-legal staff is not misleading would be to accompany the photograph with a caption specifying the professional status of each person in the photograph or stating that the photo includes non-legal staff.¹

CONCLUSION

7. The question presented is answered in the affirmative, subject to the qualifications stated above. An advertisement for a law firm may feature a photograph that includes non-lawyer employees of the firm provided that the advertisement, viewed as a whole, is not misleading about the size of the firm, its ethnic or gender diversity, or whether the people in the photograph are lawyers.

(8-10)

¹ Cf. *Alexander v. Cahill*, 598 F.3d 79 (2d Cir. 2010), *petition for cert. denied*, (U.S. Dec 13, 2010) (No. 10-203). In *Alexander*, the Second Circuit addressed the constitutionality of parts of DR 2-101(C) and DR 2-103(G), including DR 2-101(C)(3)’s prohibition of attorney advertising featuring “the portrayal of a fictitious law firm, the use of a fictitious name to refer to lawyers not associated together in a law firm, or otherwise imply[ing] that lawyers are associated in a law firm if that is not the case.” 598 F.3d at 90. The Court interpreted this provision to apply “only to situations in which lawyers from different firms give the misleading impression that they are from the same firm.” *Id.* Subject to that interpretation, the Court held that the provision did not violate the First Amendment. *Id.*