

FORMAL OPINION 109

The Professional Ethics Committee has received a request for guidance from an attorney who is also a certified public accountant. The attorney has submitted for our review various proposed hypothetical letterheads upon which the attorney is also designated as a CPA and upon which the names of nonlawyer accounting personnel are listed. The questions presented for decision are:

1. May an attorney who is also a certified public accountant indicate his status as a CPA on the attorney's professional letterhead?
2. May an attorney practicing either under his own name, a partnership name or a trade name list on his letterhead the names of persons who are not attorneys but who will perform law-related activities?

We conclude generally that the first issue may be answered affirmatively and the second in the negative, with explanations as hereinafter contained.

The opinions of the American Bar Association, and the opinions of this Committee, reflect the difficulties associated with dual professional status. "The history of the so-called dual practitioner has been long and troubled." ABA Formal Opinion 328. Various rules have been devised, from time to time, which conflicted in part and have vacillated between total prohibition of dual professionalism and approbation.

In fact, the existing opinions of this Committee are in direct conflict. Opinion No. 1 issued in 1959 held that an attorney who is also a certified public accountant may carry the designation "CPA" on his office door, professional card or letterhead and may practice both professions from the same office, providing that he adheres to the professional standards applicable to attorneys at law. In 1972 the Committee, in Opinion No. 77, reversed itself holding that an attorney may not indicate on his letterhead that he is both an attorney and a CPA. The situation is further confused by Opinion No. 79 issued in 1975 holding that although an attorney

may conduct a law practice and an accounting practice from the same office, the attorney could not indicate his status as a CPA on his law office stationery.

We believe recent changes in the Code of Professional Responsibility, mandated by developments in constitutional law following Bates v. State Bar of Arizona, 433 U.S. 350 (1970), compel us to reaffirm the position taken in Opinion 1 and abandon that taken in Opinion 77.

At the time Opinions 77 and 79 were issued, DR 2-102(e) specifically provided that a lawyer who is engaged both in the practice of law and another profession shall not so indicate on his letterhead. However, subsequent to Bates, DR 2-102 was amended to simply provide that a letterhead is improper only if it includes a statement that is false, fraudulent, misleading or deceptive as those phrases are defined in DR 2-101(b).

We fail to see how the inclusion of the designation "CPA" would constitute a false, fraudulent, misleading or deceptive statement. It is not a material misrepresentation of fact; it does not create an unjustified expectation; and it does not create the impression that the lawyer is in a position to improperly influence any tribunal. Nor does the mere designation of "CPA" necessarily imply that a lawyer specializes or limits his practice, except as permitted by law. Moreover, the designation of "CPA" may be an item of information helpful to the public in assessing the qualifications of an attorney.

Recognizing that the State Bar should seek to regulate advertising and use of letterheads only when necessary to secure substantial interests, such as the prevention of misleading statements, see National Commission on Egg Nutrition v. FTC, 570 F.2d 157 (7th Cir. 1977), we cannot say that the inclusion of the designation "CPA" on a letterhead is prohibited.

We are cognizant of the opinion of the Idaho Supreme Court, In re DePew, ___ Idaho ___, 524 P.2d 163 (1974), upholding the imposition of disciplinary sanctions for the inclusion of the designation "CPA" on a professional letterhead. However, this opinion was decided under a prior provision of DR 2-102(e) which has subsequently been abandoned. We therefore believe that the DePew opinion would not be adhered to by the Idaho Court if the question were again presented to the Court.

However, even recognizing the delicacy of problems associated with attempts to regulate or prohibit lawyer advertising, we are compelled to conclude that the second question must be answered in the negative.

Our answer to this question assumes that the associations contemplated by the various letterheads do not violate the provisions of DR 3-102 and 3-103 which prohibit the division of fees with nonlawyers and the formation of partnerships with nonlawyers if any of the activities of the firm consist of the practice of law. This seems to be a doubtful proposition as some of the letterheads seem to specifically contemplate a partnership with nonlawyers.

Although the Code does not specifically address this issue in any of its provisions, the Code, along with the other authorities, clearly evidence a general desire that the particular relationship existing between or among lawyers and with others be so clearly stated that there will be no possibility that the public would be misled. For example, ABA Ethical Consideration 2-13 states, "In order to avoid the possibility of misleading persons with whom he deals, a lawyer should be scrupulous in the representation of his professional status."

Several opinions have applied these concepts with regard to designations such as "of counsel" and "associate." See ABA Formal Opinion 330. DR 2-102(b) provides in part, "A lawyer shall not practice under a name that is misleading as to the identity, responsibility or status of those practicing thereunder."

It can thus be seen that there is a strong interest in ensuring that the responsibility and status of persons associated with a firm be clearly communicated.

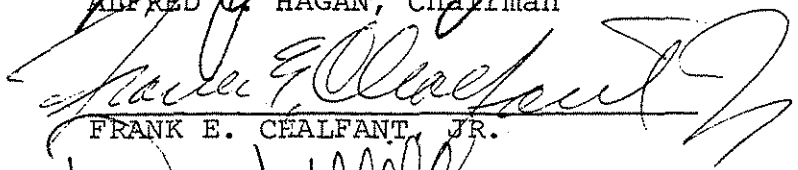
A statement is misleading, under DR 2-102(b)(2), if it fails to state any material fact necessary to make the statement, in light of all the circumstances, not misleading. Thus, any designation of a nonlawyer upon a letterhead without a full and complete description of the nonlawyer's duties and the nature of the association would be misleading. In order to avoid being misleading, the description would probably have to be longer than the letterhead. Similarly, any letterhead which created the inference that there was a partnership (whether denominated P.A., P.C.,

or Inc.) existing between lawyers and nonlawyers would be misleading.

DATED this 30th day of November, 1981.

IDAHO STATE BAR ETHICS COMMITTEE


ALFRED G. HAGAN, Chairman


FRANK E. CEALFANT, JR.


DEAN J. MILLER