

This opinion is merely advisory and is not binding on the inquiring attorney or the Courts or any other tribunal.

**DELAWARE STATE BAR ASSOCIATION
COMMITTEE ON PROFESSIONAL ETHICS**

OPINION 1992-5

A member of the Delaware Bar requested an opinion from the Committee concerning whether the letterhead and professional card used in the attorney's practice comports with the Delaware Lawyers' Rules of Professional Conduct. The attorney is a former member of the Delaware Judiciary.

Across the top of his letterhead and on his professional card, the attorney uses the following designation:

“Judge X (Ret.)”

The attorney's letterhead also lists the following areas of practice, in small regular type, with no indication that his practice is limited to such areas or that he specializes in such areas:

"Arbitration/Mediation Services

Divorces - Family Law

Real Estate Settlements"

On his professional card, the attorney characterizes himself under his name as follows:

"Attorney-Mediator-Consultant

(Family Law Specialist)"

The professional card also makes reference to a company formed by the attorney through which the attorney apparently intends to provide arbitration and mediation services. The company name is not that of the attorney.

CONCLUSION

The Committee concludes that the reference "Judge" on the letterhead and professional card is prohibited by Rule 7.1(a) (3) of the Delaware Lawyers' Rules of Professional Conduct (herein simply referred to by rule number), since it is a statement concerning the attorney's experience. Similarly, the references on the professional card to "mediator", "consultant" and "family law specialist" are prohibited by Rule 7.2 (a) (1), since there is no disclaimer on the card as required under Rule 7.1. Finally, to the extent the attorney is performing legal services through a separate company, the use of that company name would be prohibited by Rule 7.2(b).

DISCUSSION

An attorney's use of letterhead and professional cards is subject to the restrictions on advertising found in Rules 7.1 through 7.5. Rule 7.1 provides in relevant part:

(a) Advertising by a lawyer shall not:

* * *

(3) contain any statement concerning quality of any legal services offered (best, excellent, better, experienced and the like)

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(b) Disclosures.

(1) A lawyer who advertises areas of practice shall either comply with Rule 7.5 or include the following disclaimer: "Listing of areas of practice does not represent official certification as a specialist in those areas."

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Rule 7.5 provides in relevant part:

- (a) Unless the disclaimer required by Rule 7.1 is included, a lawyer shall not hold himself out publicly as a specialist, as limiting his practice, or emphasizing certain areas of law except as follows:

* * *

- (4) A lawyer may publicly list the fields of law in which he is engaged in practice at the time of such publication but without stating or implying that he specializes in, limits his practice to or emphasizes any of the listed fields of law, except as provided above.

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Rule 7.2 provides exceptions to the above rules for certain limited information contained on letterhead and professional cards.

The Committee believes that the designation of "Judge" on the attorney's letterhead constitutes a statement concerning the quality of the legal services offered. As the inquiring attorney notes in his request for an opinion, this reference is intended to denote his "former judicial tenure". Such a reference implicitly carries with it an aura of experience intended to enhance the lawyer's standing in the eyes of the public. Accordingly, this designation is prohibited by Rule 7.1(a)(3).

Other states have addressed analogous uses of judicial titles by attorneys, although under different professional responsibility codes, and have reached similar conclusions. Iowa State Bar Assoc., Opinion 80-49 (11/27/90) (retired judge may not use judicial title in professional notices, stationery, etc. . .); State Bar of Michigan, Opinion CI-850 (5/21/83) (reference to previous judicial position for business purpose improper); and Bar Assoc. of New York City, Opinion 81-37 (part-time judge may not use judicial reference in connection with private practice). These opinions indicate that the use of the title "judge" in advertising one's law practice is seen as inappropriate and possibly as implying an ability to influence the tribunal before which the lawyer practices.

Former members of the bench are traditionally referred to as "judge" during the remainder of their careers as a matter of respect and as an acknowledgement of their commitment

to public service. The Committee does not in any way intend to condemn this practice. Any judicial reference, however, cannot be used as a means to promote a law practice under the Delaware Lawyers' Rules of Professional Conduct.

The listing of areas of practice on the attorney's letterhead appears to be in compliance with Rule 7.2. Rule 7.2 refers to the provisions of Rule 7.1, which in turn incorporate Rule 7.5. Listing of fields of law in which an attorney is engaged is permitted under Rule 7.5(a)(4) without a disclaimer if there is no statement or implication in the listing that the lawyer specializes in, limits his practice to or emphasizes any of the listed fields of law.

With respect to the attorney's professional card, the reference to the former judgeship is improper for the reasons listed above. Moreover, absent a disclaimer, as required by Rule 7.1, the references to "mediator", "consultant" and "family law specialist" are prohibited under Rule 7.2(a)(1).

The Committee also believes that the use of a corporate name on the professional card is improper to the extent the attorney intends to practice law under that name. The use of such a corporate name would be prohibited by Rule 7.2(b).

It should be noted that in responding to this inquiry the Committee based its opinion on a review of the Delaware Lawyers' Rules of Professional Conduct as currently enacted. This opinion does not address or opine upon the constitutionality of the Rules discussed herein.

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