

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

Opinion 2004-1
November 1, 2004

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

Background Facts

The inquirer, a Delaware attorney, requests this Committee's opinion on whether he may state, in an advertisement, firm stationery, or other communication that otherwise conforms with the Delaware Rules of Professional Conduct ("DLRPC") that the attorney is a Certified Public Accountant ("C.P.A.") if the use of the term C.P.A. conforms with other applicable Delaware law, rules or regulations concerning use of such term.

Conclusion

It is the Committee's opinion that the inquirer may include reference to his status as a duly-licensed C.P.A. on letterhead and in advertisements and other communications without violating Rules 7.1, 7.2 or 7.5 of the DLRPC. As long as the reference employs language that does not imply a legal specialization, it will also comply with Rule 7.4 of the DLRPC.

Discussion

The specific provisions of the DLRPC which are implicated in the inquirer's request are Rule 7.1 (communications concerning a lawyer's services), 7.2 (advertising), 7.4 (communication of fields of practice and specialization) and 7.5 (firm names and letterhead).

Rules 7.2 and 7.5 allow the use of advertisements and letterhead provided that such advertisements and letterhead do not violate Rule 7.1's proscription that "a lawyer

shall not make a false or misleading communication about the lawyer or the lawyer's services.” Inclusion of the C.P.A. designation by this inquirer in advertisements and letterhead would not violate Rule 7.1, as the inquirer has represented to this Committee that he “maintains a duly authorized permit to practice Certified Public Accountancy” in Delaware. Thus, the representation that the inquirer is a C.P.A. would not be a “false or misleading” statement about the inquirer.

While there is no Delaware authority on point, other state and federal precedent on this issue is in accord that disclosure of an attorney’s C.P.A. license is not a false or misleading communication. In *Silvia S. Ibanez v. Florida Department of Business and Professional Regulation*, 512 U.S. 136 (1994) the Supreme Court held that the Florida Board of Accountancy’s censure of an attorney whose advertisements and other communications included a reference to her C.P.A. license violated the First Amendment as an unreasonable constraint on commercial speech. The Court, relying on *Baird v. State Bar of Arizona*, 401 U.S. 1 (1971), held that as long as the attorney holds an active C.P.A. license from the Board, it was unimaginable how consumers could be misled by a truthful representation to that effect. Further, the Court pointed out that absent any evidence of actual deception, the Board’s “concern about the possibility of deception in hypothetical cases is not sufficient to rebut the constitutional presumption favoring disclosure over concealment.” 512 U.S. at 145.

Other states’ ethics advisory committee opinions likewise have found that inclusion of the C.P.A. designation in letterhead, advertisements and other communications did not violate provisions of those states’ rules of ethics that are nearly identical to Rule 7.1 of the DLRPC. In Opinion Number 108 of the Utah State Bar Ethics Advisory Opinion Committee, the Utah committee opined that the use of the C.P.A.

designation in the referenced communications would not be a “false or misleading communication.” The ethics committees of Connecticut, North Carolina and Texas have also opined that an attorney may communicate to the public his or her status as a C.P.A. without violating those states’ rules of professional conduct. Connecticut Bar Association Committee on Professional Ethics, Informal Opinion Number 95-5 (1995); North Carolina State Bar, 2000 Formal Ethics Opinion 9 (2001); Supreme Court of Texas Professional Ethics Committee, Opinion No. 406 (1983).

The Committee also finds the inclusion of the C.P.A. designation in advertisements, letterhead and other communications would not violate Rule 7.4 of the DLRPC. Rule 7.4 allows a lawyer to communicate that he or she practices in a particular field of law. The inquirer has indicated that he wishes to concentrate his practice “principally in the fields of Taxation and Estate Planning.” A straightforward reference to inquirer’s C.P.A. license is consistent with the disclosure of such practice concentrations. Although the inquirer has not provided the Committee with the exact language he intends to use to convey his status as a C.P.A., but the Committee notes that pursuant to Rule 7.4, he may not use language that indicates a legal specialty.

The Committee is also concerned about the prospect that the inquirer will be providing “law-related services” as that term is defined in Rule 5.7 of the DLRPC. Comment [1] to Rule 5.7 notes that “[w]hen a lawyer performs law-related services...there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship.” To the extent that the inquirer intends to provide law-related services in his practice, he must take reasonable measures to make his clients

aware of the issue that these services may not be afforded attorney-client privileged status.