

**STATE BAR OF NEVADA  
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY**

**Formal Opinion No. 14  
October 8, 1993**

**QUESTION** - May a lawyer list on his or her office letterhead the states where he or she has been admitted to practice law, but is currently an inactive member of the state bar association?

**ANSWER** - A lawyer who is admitted to the state bar association in states where he or she is currently inactive may list the states on his or her letterhead so long as a qualification is included indicating the inactive status.

**AUTHORITIES RELIED ON**

Nevada Rules of Professional Conduct (Supreme Court Rules) 195,196.5 Formal Opinion No. 13 of the Standing Committee on Ethics and Professional Responsibility, Gary E. Peck v. Attorney Registration and Disciplinary Commission of Illinois, 496 U.S. 91 (1990); In re R.M.J., 455 U.S. 196 (1981).

**DISCUSSION**

**INTRODUCTION**

The following Opinion relies heavily on Formal Opinion No. 13, issued by the State Bar of Nevada Standing Committee on Ethics and Professional Responsibility, dated May 28, 1993. That opinion also dealt with what a lawyer could include on his or her letterhead. Specifically, the Opinion addressed whether a lawyer could include that he or she was a Certified Bankruptcy Attorney by the American Bankruptcy Board of Certification. That question and the present one are analogous because both must address whether the letterhead is potentially misleading, thereby subjecting it to possible regulation by the State.

**SUPREME COURT RULES**

Supreme Court Rule ("SCR") 195 is identical to Model Rule 7.1 of the ABA Model Rules of Professional Conduct. SCR 195 states:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

1. Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
2. Is likely to create a unjustified expectation about results the lawyer can achieve, ....

SCR 196.5 further defines the prohibition of misleading statements with more relevance to the question presented:

8. Any factual statement contained in any advertisement or written communication or any information furnished to a prospective client under this rule shall not:
  - (a) Be directly or impliedly false or misleading;
  - (b) Be potentially false or misleading;
  - (c) Fail to disclose material information necessary to prevent the information supplied from being actually or potentially false or misleading;
  - (d) Be unsubstantiated in fact; or
  - (e) Be unfair or deceptive.

**HISTORICAL BACKGROUND**

In In re R.M.J., 455 U.S. 191 (1981), the United States Supreme Court effectively discussed how and why

advertising by lawyers should be regulated. The court cited the public's lack of knowledge concerning legal services as an important reason that potentially deceptive advertising be subject to regulation. In re R.M.J., 455 U.S. 191,200; State Bar of Nevada Standing Committee on Ethics and Professional Responsibility, Formal Opinion No. 13, May 28, 1993, p. 4. The court went on to state that the individual states have the authority to enact such regulation, albeit in a careful and limited manner. "[A]lthough the States may regulate commercial speech, the First and Fourteenth Amendments require that they do so with care and in a manner no more extensive than reasonably necessary to further substantial interests." In re R.M.J., 455 U.S. 191, 207; Formal Opinion 13, at 4.

In the recent Supreme Court case of Gary E. Peel v. Attorney Registration and Disciplinary Commission of Illinois, 496 U.S. 91 (1990), Mr. Peel listed his certification as a Certified Civil Trial Specialist by the National Board of Trial Advocacy on his letterhead. A five justice majority of the United States Supreme Court concluded that Mr. Peel's letterhead was not actually or inherently misleading and, therefore, did not warrant a strict regulation banning the letterhead. Peel, 496 U.S. 91, 110; Formal Opinion No. 13, at 4.

Without reiterating verbatim the test of Formal Opinion No. 13, the importance and relevance of Peel is that despite concluding that Mr. Peel's letterhead did not warrant and elimination of the certification listing, five justices nonetheless viewed the letterhead as potentially misleading. As a result, Justices Marshall and Brennan suggested the state institute less restrictive measures against such letterheads, including disclaimers. The information is still present on the letterhead, but the risk of deception is lessened. Peel, 496 U.S. 91, 112,115-117; Formal Opinion No. 13, at 5.

As noted above, SCR 196.5 prohibits any written communication from an attorney from being "potentially false or misleading." SCR 196.5 8(b). Furthermore, the U.S. Supreme Court authorized the regulation of potentially misleading information in Peel. Thus the State may intervene if listing inactive State Bar Association memberships on one's letterhead is potentially misleading.

Formal Opinion No. 13 addressed this question by referring to a study conducted by the Nevada Study Committee On Lawyer Advertising. The Committee surveyed Nevada residents regarding their opinions and views related to lawyer advertising. The Committee concluded that "many" Nevada residents believed that lawyers who advertised in a specific area of practice "could be expected to give higher quality service." Formal Opinion No. 13, at 6. The Standing Committee on Ethics and Professional Responsibility referred to this evidence in concluding that there is a "significant potential for confusion among consumers about relative qualifications of attorneys" and went on to determine that this confusion is likely to exist for private communications as well. Formal Opinion No. 13, at 7.

The issue addressed herein is whether listing inactive State Bar Association memberships on one's letterhead is as potentially misleading as being certified by the American Bankruptcy Board of Certification as a Bankruptcy Attorney. The study commissioned by the Nevada Study Committee On Lawyer Advertising found that there is significant potential confusion concerning qualifications of lawyers. The States where a lawyer is licensed to practice law is as much a "qualification" as being a certified Bankruptcy Attorney.

A lawyer's letterhead is a form of public communication and as such is subject to the general directive of Rule 7.1 that it not contain material that is false or misleading. What this means in specific terms is that the lawyers listed should be currently practicing with the firm and in that way available to the client as indicated by the appearance of their names on the letterhead. The jurisdictional limitations on each lawyer's admission to practice should be evident.

ABA/BNA Lawyer's Manual on Professional Conduct, 81.3004 (1989). The questions presented in this opinion and Formal Opinion No. 13 are essentially identical and warrant the same conclusion.

## **CONCLUSION**

The authority provided in Peel, Formal Opinion No. 13, and the Supreme Court Rules persuades this Committee to require a qualification if a lawyer decides to list on one's letterhead those states of which he or she is presently an inactive member of the state bar association. The state can effectively intervene without placing too heavy a burden on lawyers. Requiring lawyers who are on inactive status in some states to indicate as such on their letterhead with an asterisk (\*) by each inactive state is a simple solution. The lawyer is still able to inform the public where he or she has been admitted to practice law without the possible deception that exists with no qualifications.

*This opinion is issued by the Standing Committee on Ethics and Professional Responsibility of the State Bar of Nevada, pursuant to SCR 225. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, its Board of Governors, any person or tribunal charged with regulatory responsibilities, or any member of the State Bar.*