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## Ethics Advisory Opinions

### Ethics Advisory Opinion 90-25

Upon the request of a member of the South Carolina Bar, the Ethics Advisory Committee has rendered this opinion on the ethical propriety of the inquirer's contemplated conduct. This Committee has no disciplinary authority. Lawyer discipline is administered solely by the South Carolina Supreme Court through its Commission on Lawyer Conduct.

#### Full Text

What is the ethically proper way for a Law School graduate, who has not received his Bar exam results, to sign correspondence for a law firm?

#### Summary:

A Law School graduate working for a firm, should make his status clear when signing correspondence. He may sign that the letter is on behalf of an attorney of the firm; or he may write some delineation that clarifies his status within the firm.

#### Opinion:

Several considerations are raised by this question. Perhaps the over-riding issues are those of avoiding unrealistic expectations for the firm's clients and misrepresentation or deception to others. The key issue is framed by Rule 5.5 of the Rules of Professional Conduct. Rule 5.5 prohibits the unauthorized practice of law. Rule 5.5(b) states that a lawyer shall not assist a person who is not a member of the Bar in the performance of activity that constitutes the unauthorized practice of law. The comment to this Rule states that limiting the practice of law to members of the Bar protects the public against rendition of legal services by unqualified persons. The comment goes on to state "Paragraph (b) does not prohibit a lawyer from employing the services of para-professionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work." The Law School graduate should be able to sign letters having to do with matters for which he is qualified, if he is properly supervised by one of the firm's attorneys. The supervisory lawyer, however, would be accepting full responsibility.

As to the graduate's signing correspondence, Rule 5.3 which dictates responsibilities regarding non-lawyer assistants, should also be considered. Rule 5.3(b) states that the supervisory lawyer shall make reasonable efforts to insure that the person's conduct is compatible with the professional obligations of the lawyer. That provision would seem to require the

supervisory lawyer at least to review, if not actually sign, any communications written by the graduate. In the Comment to this Rule, reference is made to the employment by lawyers of law student interns and para-- professionals. The Comment states that such assistants act for the lawyer in rendition of the lawyer's professional services. A lawyer should give appropriate supervision and the lawyer should be responsible for the work product.

Correspondence from a lawyer's office is something of an advertisement for that lawyer. Therefore, the section of the Rules dealing with lawyer advertising should also be reviewed. In Rule 7.1, it states that a lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. It also states that a communication is false or misleading if it contains a material misrepresentation of fact or law.

Thus, if the Law School graduate were to be acting ethically, he would give some sort of indication that he is not actually a member of the Bar.

Also, Rule 7.5(a) states that the lawyer shall not use a firm name or letterhead that violates Rule 7.1. There is no question then, that the Law School graduate's name may not be included in the letterhead.

Further, Rule 7.5(b) states that ". . . identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations of those not licensed to practice in the jurisdiction where the office is located." This would make it seem that there is no question that there should be some delineation of the graduate's position in the firm or lack of Bar membership.

Two other provisions should also be considered. Rule 4.1 states that in the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person. This would seem to apply to correspondence sent by the graduate to someone who is not a client.

Finally, Rule 1.1 states that a lawyer shall provide competent representation to a client. The comment states that "a newly admitted lawyer can be as competent as a practitioner with long experience" in regard to certain matters. The real consideration, though, concerns the correspondence to the client and the client's expectations of competency upon receiving it.

In order to avoid misrepresentation or deception both to clients and others, it would seem necessary that the Law School graduate working for a firm make clear his status in the firm or with the Bar. If he does not do this by some sort of titling with his name, then the letter should state that it is "on behalf of" or "for" the practicing supervisory attorney.

#### South Carolina Bar

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