

OPINION 522

October 1997

Question

What disclosures must a law firm make after learning that a partner who recently joined the law firm provided false information regarding his qualifications?

Statement of Facts

A law firm has discovered that one of its partners who recently joined the firm provided false information to the firm, its lawyers, clients, and potential clients about his background.

Specifically, the partner claimed to be a graduate of a law school from which he did not graduate. He claimed to have degrees (MBA and LL.M.) which he has not earned. He also claimed to be licensed in several jurisdictions in which he is not licensed. Although the firm assumed the partner to be licensed in Texas, he is not. He has, since joining the firm, applied for admission to the State Bar of Texas.

Based on data provided by the partner, the firm sent resumes to clients, potential clients, and its lender which included the false information. Additionally, the partner, with the firm's approval and sponsorship, has sought admission to practice in one or more jurisdictions where the false information has been included in the applications for admission.

As a result of the firm's discovery of the misrepresentations, it has been decided that the partner will leave the firm.

Discussion

Is the law firm obligated to disclose the falsity of such information to all clients and potential clients who received the resumes?

The person who provided the false information to the law firm is not regulated by the Texas Disciplinary Rules of Professional Conduct since he is neither a lawyer nor a member of the bar. However, once the law firm becomes aware, or should have become aware of the false information, certain duties, obligations, and responsibilities fall upon the law firm and the lawyer members thereof pursuant to the Texas Disciplinary Rules of Professional Conduct. First, the law firm should immediately terminate the relationship between the law firm and the person providing the false information since continuing the relationship would be assisting a person who is not a member of the bar in the performance of activities that constitute the unauthorized practice of law. As such, the continued relationship would be a violation of [Rule 5.05](#).

Furthermore, in inadvertently communicating the false information to clients, the general public, and others, the law firm should come under the scrutiny of [Rules 7.01](#) and [7.02](#). Although it may have been inadvertent, the law firm used a name that was misleading as to the identity of lawyer or lawyers practicing under such name in violation of Rule 7.01. Additionally, in sending out the resumes, the law firm, again inadvertently, made false or misleading communications about the qualifications or services of the law firm by sending out resumes which contain material misrepresentations of fact. *See* [Rule 7.02](#) (a)(1).

The committee has been careful to point out that the conduct of the law firm in disseminating the false

information was inadvertent. To continue the association or the dissemination of the information after discovering the false information, however, would be a violation of the above rules. There is no directive in the Texas Disciplinary Rules of Professional Conduct as to precisely what remedial action the law firm should take once it discovers the false information received from a *non-lawyer*, other than a client. See [Rule 4.01](#) as to necessary disclosures with regard to false statements made in the course of representing a client. However, it is the opinion of the committee that as to the facts presented in this case, the duty upon the law firm and the lawyer members thereof would be the same as that imposed on them upon learning that a *lawyer* violated these rules.

[Rule 5.01](#)(b) states in part: "A lawyer shall be subject to discipline because of another lawyer's violation of these rules of professional conduct if the lawyer is a partner in the law firm ... and with knowledge of the other lawyer's violation of these rules knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of the other lawyer's violation."

In this case, as in the case of learning of a lawyer's violation of the rules, the law firm should take "reasonable remedial action." At a minimum, in the present case, the law firm should send out new resumes and inform all who received the resumes of the false or inaccurate information which the previous resume may have contained. To not fully inform clients, potential clients, and others affected thereby of the falseness of this information would be a violation of Rule 8.04, which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. See [Rule 8.04](#)(a)(3).

Is the firm obligated to notify the State Bar of Texas or state and federal courts where the lawyer is currently licensed of the false statements?

If the person who provided the false information is in fact "licensed" in other state or federal courts, it is incumbent upon the law firm to report such conduct to the appropriate disciplinary authorities. [Rule 8.03](#) requires in part that "a lawyer having knowledge that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authorities." In this particular case, other appropriate authorities would include the Board of Law Examiners, Admissions Committee, and the Unauthorized Practice of Law Committee of Texas and other states to which he may have applied for admission.

Is the firm obligated to disclose to the firm's lender that false statements have apparently been made, inadvertently, by the law firm in the loan application to the lending institution based on representations of the lawyer which were believed to be true by the firm at the time the loan application was made?

Other than stating that the law firm should be guided by the "reasonable remedial action" standard discussed above, the committee expresses no opinion on this question as it raises questions outside its scope which may include possible civil liability and, in some circumstances, state and/or federal criminal violations.