

ADMONITION NO. 00-23

CLASSIFICATIONS:

Assisting Another in Unauthorized Practice of Law [Mass. R. Prof. C. 5.5(b)]

False or Misleading Communication [Mass. R. Prof. C. 7.1]

Firm Names and Letterhead [Mass. R. Prof. C. 7.5]

SUMMARY:

This matter came to Bar Counsel's attention as a result of an inquiry in 1999 from a caller concerning a Social Security "representative" whom the caller had contacted about pursuing a Social Security claim on the caller's behalf. The caller believed that this individual was an attorney. When Bar Counsel called the representative, the telephone was in fact answered "law offices". However, Bar Counsel was told that by the receptionist that the representative was a paralegal and that the respondent was the responsible attorney.

The facts are as follows. The respondent practices Social Security disability law. Commencing in 1996, the respondent sublet space in the offices of another attorney ("the associated attorney") who had the same type of practice. Social Security representatives are not required to be attorneys and the associated attorney had a paralegal "X" who was trained to handle administrative hearings as permitted by Social Security regulations.

The associated attorney became very ill in 1998 and retired from the practice of law. The paralegal then started her own firm in her own name ("X Associates") and effectively took over the associated attorney's Social Security disability practice. X is the "representative" whom the original caller to Bar Counsel had contacted.

Although all persons who eventually became clients of X Associates would sign forms required by the Social Security Administration that identified X as a paralegal, X advertised her business in the Yellow Pages in the attorney section: "DISABILITY/Social Security Denials/ X Associates." The ad carried no indication that X was not an attorney or that X Associates was not a law firm. The respondent was not involved in these decisions.

However, the respondent did continue to rent space in the office suite and to provide assistance to X Associates as needed. Although he has a separate telephone number, the respondent knew that the receptionist answered the telephone lines for both the respondent's office and X Associates as "law offices". The respondent indicated to Bar Counsel that he was "in house counsel" to X Associates and that he did not consider this form of answering the telephone to be inappropriate because he "lends his name" to X Associates. In addition, although the respondent also had his own letterhead, his name ("[Respondent], Esq.") was the first name listed on the letterhead of X Associates. There was no indication on the letterhead that the office was not a law firm and the listing of the respondent's name in that manner created the impression that X Associates was an attorney's office. In fact, the respondent only occasionally gave assistance to X or covered hearings for her when X had a schedule conflict and he received no part of X's fees.

Although Social Security disability claimants can be represented by either lawyers or nonlawyers, X held her practice out in a manner designed to blur the distinction. The respondent's conduct in allowing his name to be listed on the paralegal firm's letterhead, and in further failing to insure that the paralegal firm's telephone line was answered in a manner that was not deceptive, constitutes assisting a nonlawyer in the unauthorized practice of law in violation of Mass. R. Prof. C. 5.5(b). The misleading letterhead also violated the advertising rules, Mass. R. Prof. C. 7.1 and 7.5.

In mitigation, the respondent and the paralegal have since taken steps to insure that the paralegal's firm is not held out as a law office. Each has separate letterhead and the respondent is not listed on the paralegal firm's stationery. The receptionist now answers the paralegal firm's line "X Associates". The paralegal has also discontinued the Yellow Pages advertising.

The respondent accordingly received an admonition for the above violations, conditioned upon attendance at a CLE course designated by Bar Counsel.