

KOHL & SPOTTS
PROFESSIONAL ASSOCIATION OF ATTORNEYS
50 Southeast Kindred Street
Stuart, Florida 34994
Mailing Address
P.O. Box 1166 Stuart, FL 34995-1166

Karen M. Dobbins
T.J. Heinemann
N. Dean Kohl, JR
Gary T. Richards

Stuart 561-223-9999
Fort Pierce 561-468-0011
Fax 561-223-9008
www.kohlspotts.com

September 2, 1999

Board of Accountancy
2610 NW 43rd Street, Suite 1-A
Gainesville, Florida 32606

Board of Accountancy:

My name is Gary Richards, CPA. I have a question concerning CPA ethics. My revised request is entered under Chapter 473,F.S. and 61H1,F.A.C. My request concerns CPA advertising under chapters of the rules regulating certified public accountants, Reg. 61H1-24.001. The request is stated within the framework of your letter, so there can be no confusion.

All requests for opinions must be submitted in writing and contain the following information:

- 1. A complete statement of the situation which must be hypothetical. The Board cannot respond to requests regarding actual circumstances. If the request pertains to only a small portion of a large transaction which would impact the situation presented, the entire transaction should be submitted.**

If a person is both a CPA and an attorney and places a small "tombstone" advertisement in the local newspaper, advertising areas of legal practice such as "Divorce", "Taxes", "Bankruptcy", "Wills & Trusts", "Corporations", etc. and listing the name of the individual, and the name of the law firm as:

John Doe, CPA/Attorney or Attorney/CPA
Law Firm, P.A.
call (561) 999-5555

Neither the individual nor the firm way would engage in areas of certified public accounting requiring a license or hold itself out as practicing in certified public accounting.

- 2. The request must contain:**

(1) Specific questions relating to the situation presented.

- a. can the attorney include the CPA designation in the advertisement?
- b. is the attorney using the CPA designation required include the statement "regulated by the State of Florida." In the immediate proximity of the CPA designation within the advertisement (tied with an asterisk)?

(2) Citations to and discussion of the pertinent law and rules.

The United States Supreme Court addressed this situation in Ibanez v. Florida Department of Business and professional Regulation, Board of Accountancy, 512U.S. 136 (1994). In that case the Supreme Court held that the CPA designation was commercial speech and thus protected by the First Amendment. The Supreme Court stated, "Ibanez, it bears emphasis, is engaged in the practice of law and so represents her offices to the public. Indeed, she performs work reserved for lawyers but nothing only CPA's may do. The Supreme Court also Quotes Florida Bar Rule 4-7.3, which "specifically allows Ibanez to disclose her CPA and CFP credentials...

The Florida State Bar Association also addressed this issue in Ethics Opinion 88-9 (cited as 1988 WL 281587) (attached), and stated that as long as the information contained in the announcement or advertised is not false or misleading,..., it is permissible. Such information includes... any degrees or licenses the attorney holds...

The Florida Board of Accountancy Rule 61H1-24.001, Advertising, Section (1)(g): A licensee may state or imply that the licensee has received any bona fide formal recognition or attainment in conjunction with the CPA licensure designation so long as contained within the advertisement and in the immediate proximity of the CPA licensure designation is found a statement that the CPA licensure designation is regulated by the State of Florida. In addition, the advertisement must use a mark, such as an asterisk, to tie the CPA designation to the statement.

(3) Conclusions drawn for each question asked, based on the law and rules.

- a. can the attorney include the CPA designation in the advertisement?
Because the United States Supreme Court, the Florida Bar Association, and the Florida Board of Accountancy agree that this is permissible advertising, the conclusion is that this is acceptable.
- b. is the attorney using the CPA designation required include the statement "regulated by the State of Florida." In the immediate proximity of the CPA designation within the advertisement?
This represents the difficult issue. Based on the regulation, it would appear that the asterisk and the tie to Florida regulation is required for the CPA. However, this presents a problem. If the person looking at the advertisement sees the asterisk indicating the CPA is regulated by the State of Florida, but does not see that the attorney is regulated by the State of Florida. To avoid this confusion and misrepresentation, it would be better to not require the attorney

to list the "regulated by the State of Florida" regarding the CPA designation, rather than to include two asterisks, as both areas are regulated by the State of Florida. This is the decision I await from the Board.

Thanks for your help.
Gary Richards