We give no opinion on whether A and B are authorized or competent to advise on foreign patents and trademarks under the laws of other countries and we would disapprove the announcement regarding "offering legal advice on international licensing and litigation problems in the field of industrial property", since this field would not be a recognized legal specialty.

Neither are we passing on whether or not the non-lawyer organizations referred to by A and B are observing the stipulations which they have previously signed requiring them to deal only directly with lawyers or law departments who take direct responsibility for their corporate clients, as the matter of such violations, if any, would be within the jurisdiction of the Committee on Grievances.

A prior opinion of this Committee, Opinion No. 21 - 12/20/65 (10-65), stated that it was not improper for a lawyer who practices one of the recognized specialties of admiralty, patents or trademarks to so indicate on his letterhead. The Committee gave this opinion notwithstanding that Canon 27, adopted by the State of New York, had omitted the last sentence of Canon 27 of the American Bar Association to the same effect.

In response to the specific question asked by A and B, assuming their proposed announcement is modified as indicated, it could properly be circulated directly among local patent lawyers and by the mailing service of a local patent law association which admits lawyers only, except for a few patent agent members who are not lawyers.

Opinion #50 - 2/17/67 (3-65)

Topic: Unauthorized Practice of Law. Assisting Client Practice Law.

Digest: Improper for lawyer to make limited appearance on behalf of client so client could then privately negotiate a settlement.

Canon: Former Canons 29, 47

QUESTION

I have been asked to represent a steamship line, which is the defendant in a Seaman's action in Federal Court under the Jones Act, in the following limited manner:

"This will confirm our instructions that you will arrange at mutual convenience of (Plaintiff's attorney) and your office for examination before trial of (the Plaintiff).

"The purpose of same is to develop a clearer picture of what actually transpired as facts, heretofore, developed appears to be highly controversial.

"When examination is completed kindly return the file and E.B.T. to this office at which time we will proceed further with settlement discussions with (Plaintiff's attorney)."

To enable me to conduct the examination before trial, I would, of course, appear as attorney of record in the action. However, it is contemplated that, except for conducting an examination before trial, I would have no further responsibility or authority in connection with the action. Following the E.B.T., settlement negotiations would be conducted by the carrier's claim department. In the meantime, the carrier's time to answer the complaint would be indefinitely extended pending negotiations. The procedure outlined above is becoming a fairly common practice with steamship companies and insurance carriers.

I would like the opinion of the Committee on Ethics as to whether I can ethically accept this retainer and participate in the limited manner outlined above. It would appear to me that this situation involves both a question of ethics and the question of the unauthorized practice of law by claims adjustors. The Virginia State Bar Association's Committee on Legal Ethics (Opinion #137 - April 19, 1965) and Committee on Unauthorized Practice of Law (Opinion #36 - April 16, 1965) have recently rendered opinions that it is unlawful for an insurance claims adjustor to discuss settlement with a plaintiff's attorney after there has been an appearance by an attorney on the part of the defendant and further, that it is unethical for the defendant's attorney to cooperate in this practice.

OPINION

It is the opinion of the Committee that the retainer under the circumstances set forth above would be improper and in violation of the Canons of Legal Ethics.

The essence of this matter is that the client steamship line, in order to assist its laymen claim adjustors to successfully negotiate settlements on their own in pending legal actions, would retain an independent practitioner for the limited purpose of developing the controversial facts in an examination before trial. Upon the completion of that examination, the testimony and the file would be returned to the company to allow the layman claim adjustor to proceed further with settlement discussions. (There is a clear implication in the phrasing of the facts that prior settlement discussions had already been had, that they had proved fruitless, and that it was in the hope that the examination before trial would develop helpful information that the attorney was being retained.)

The retaining of a member of the Bar in what amounts to a limited sub-contractor capacity to a layman is demeaning to the legal profession. Accepting such an engagement, for the avowed purpose of providing the client with the tools by which it can itself, to the exclusion of a lawyer, successfully negotiate a settlement, is undignified and is in derogation of the honor of the profession. (Canon 29). The situation would be otherwise, however, if the case were one where an outside independent counsel for the shipping company, having appeared generally as attorney of record in the case, were to engage another attorney for the specific purpose outlined above with instructions to return the EBT and the file to such general counsel of record upon completion of the work for which special counsel was engaged.

In addition, if it be assumed that the settlement negotiations by lay adjustors is a form of unauthorized practice of the law, then the acceptance of a retainer in the circumstances outlined above would, in and of itself, be a violation of Canon 47. However, this Committee express no opinion as to whether or not the activities of lay adjustors under those circumstances is unauthorized practice of the law, this question being one for consideration by the Committee on Unauthorized Practice of the Law and, accordingly, it has been referred by this Committee to that other Committee of this Association.

(Committee Members Dissenting: Messrs. Stephen B. Hughes, Sanford D. Levy, and Gray Thoron.)

Opinion #51 - 2/24/67 (1-67)

Topic: Advertising.
Telephone Directory.

Modified by #200

Digest: Lawyer may list name in community directory where he does not practice so long as he does not include designation "atty" or "lwyr".

Canon: Former Canon 27

QUESTION

An attorney inquires whether it is proper to have his telephone listed in a community other than that in which he maintains an office, either in his own name without the legend "atty" or with the same.

OPINION

In our opinion it would be proper for an attorney to have his telephone listed in a community other than that in which he maintains an office, without the designation "atty" or "lwyr". However, it would be improper, under Canon 27 of the Canons of Professional Ethics prohibiting advertising, to list an attorney's telephone either in a regular directory or a classified directory (yellow pages), with the designation "lwyr" or "atty", in any place except where he maintains an office or where he resides. For example, the following listings, which appear frequently in the New York City directory, are proper:

John Jones lwyr 1 Bway
Res. 1 Fifth Ave.
Res. Princeton, N.J.