

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

With the effective date of the new Code, a lawyer may, if he wishes, list any earned law degrees (LL.B.; J.D.; LL.M.; S.J.D. or J.S.D.) following his name on professional cards, announcements, letterheads, office signs, and in telephone or other directory listings. A lawyer who has earned a doctor's degree in Law (J.D., S.J.D. or J.S.D.) may also use the title "Doctor", both professionally and socially. Where a J.D. has been awarded retroactively, in place of an earned LL.B. degree, it may be treated as an earned degree.

Although it is no longer improper for a lawyer to list his earned law degrees or to use the title "Doctor" if his degree is a J.D. or one of the other legal doctorates, care must be taken that any such listing or use be accurate and dignified. See Code EC 2-9 and 2-10.

Opinion #106 - 6/10/69 (28-68)

Topic: Telephone Directory Listing
Digest: Listing of a duly qualified attorney in a classified telephone directory as both a patent and general attorney.

Modifies #81

Canon: Former Canon 27

QUESTION

May a patent attorney properly list himself in a classified telephone directory under a heading of "Patent attorneys and agents" and also under a heading of "Attorneys" or "Lawyers"?

OPINION

Persons permitted to practice before the U.S. Patent Office are classified as either patent agents or patent attorneys. Non-lawyers admitted to practice by the Patent Office are patent agents. Lawyers admitted to practice in a state and also by the Patent Office are patent attorneys. The requirements to practice before the Patent Office are the same for both, but separate registers are kept for each.

ABA Canon 27 provides in part:

"Advertising, Direct or Indirect.
.....

"It is not improper for a lawyer who is admitted to practice as a proctor in admiralty to use that designation on his letterhead or shingle or for a lawyer who has complied with the statutory requirements of admission to practice before the patent office, to so use the designation 'patent attorney' or 'patent lawyer' or 'trademark attorney' or 'trademark lawyer' or any combination of those terms."

New York State Canon 27 does not have such provision, but numerous opinions of the Committee have been given as if it were included. (N.Y.State 21, 24, 49, 85.)

Practice before the Patent Office is a right given by federal law. General legal practice in a state is a right given by state law. Each jurisdiction should avoid interfering with the other, or restricting the rights granted thereby. An attorney licensed by both should not be forbidden to list himself in a telephone directory.

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In the opinion of this Committee, it is proper for a duly qualified attorney to list himself in a classified telephone directory under both "Patent attorneys and agents" and "Attorneys" or "Lawyers". N.Y.State Opinion #81-6/6/68 (16-68) is hereby modified to the extent inconsistent herewith. See Silverman vs. State Bar of Texas, _____, F.2d _____ (5th Cir. Dec. 1968, Case #25582 160 US PQ 171). To the contrary see ABA 286, ABA Inf. 1048.

Opinion #107 - 6/10/69 (9-69)

Modified by #107(a)

Topic: Commissions and Rebates
Digest: Proper for a lawyer to accept referral fee from investment agent for placing certificates of deposit in financial institutions with funds of clients as long as full disclosure is made to client and client consents.

Canon: Former Canon 38

QUESTION

A financial company has offered to enter into an arrangement with an attorney whereby the attorney would receive stipulated fees for causing funds of the attorney's clients to be referred to said company for investment in certificates of deposit in various savings and loan associations. The proposed fee agreement provides that the attorney must return his fee in whole if a client's funds are withdrawn in six months or less, and that half the fee must be refunded if withdrawal is made within a year. The proposed agreement further provides that fees will be paid on the attorney's personal accounts, but not until an equal amount is placed by the attorney for his clients.

The attorney inquires whether he may accept such referral fees, and if so, whether he must disclose the arrangement to his client or remit the fee to his client.

OPINION

Normally, the acceptance by an attorney of a commission or fee, such as is generally remitted by title insurance companies to attorneys who cause their clients to purchase a title policy from the company, is only proper where there is full disclosure to the client and the client's consent is obtained. In the event that the client desires that any commission paid to the attorney be remitted to the client, the attorney must do so, and disclosure of this fact should be made to the company granting the fee, since this fact may affect its willingness to grant such fee.

The proposed fee arrangement could be a factor which might induce the attorney to cause his client's funds to be invested through the agency granting this fee, rather than through some other medium of investment, or induce the attorney to advise his client to keep his funds invested for a period longer than circumstances objectively would dictate. In the opinion of the Committee, therefore, the proposed arrangement may be professionally improper unless the attorney, before taking any steps to invest his client's funds, shall disclose to his