



Committee on Professional Ethics

Opinion #403 - 7/9/75 (60-75) Topic: Telephone directory listing;
advertising

Modifies #81

Digest: Lawyer's listing in classified telephone directory may include firm name, night telephone number, name of office building.

Code: DR 2-102(A)(5) and (6); 2-105(A)(1)
EC 2-9, 10
Canon 2

QUESTION

May a lawyer list in a classified telephone directory (in addition to listing his name, address and office telephone number) the name of the firm, if any, of which he is a member, its night telephone number, the name of the office building in which his office is located, his office suite number, postal zip number and cable address, and specialty where it is patents, trademarks or admiralty; also to include the initials "P.C." or "P.A." in the case of professional legal corporations, and earned law degree, where requested?

OPINION

The Code, as originally adopted, accepted the traditional concept that advertising by lawyers would impair confidence in the legal system, and that its prohibition was rooted in the public interest. EC 2-9. Nevertheless, in order to facilitate access to professional assistance through dignified identification of lawyers, the publication of a lawyer's name together with limited identifying data was declared to be permissible in certain instances, including listings in a classified telephone directory. EC 2-10. This was grounded upon the belief that the incidental publicity accorded the lawyer was outweighed by the public interest in creating ready access to legal counsel. See, ABA 284 (1951); ABA 313 (1964); N.Y. State 81 (1968). Prior to the adoption of the Code, there were differing opinions as to what material could be included in the identifying data. Drinker, Legal Ethics 246 (1953). The Code was intended to resolve doubts by setting forth precisely what could be said.

DR 2-102(A)(5) provides as follows:

"(A) A lawyer or law firm shall not use...telephone directory listings...except that the following may be used if they are in dignified form:

* * *

" (5) A listing of the office of a lawyer or law firm in the alphabetical and classified sections of the telephone directory or directories for the geographical area or areas in which the lawyer resides or maintains offices or in which a significant part of his clientele resides and in the city directory of the city in which

his or the firm's office is located; but the listing may give only the name of the lawyer or law firm, the fact he is a lawyer, addresses, and telephone numbers. The listing shall not be in distinctive form or type. A law firm may have a listing in the firm name separate from that of its members and associates. The listing in the classified section shall not be under a heading or classification other than 'Attorneys' or 'Lawyers', except that additional headings or classifications descriptive of the types of practice referred to in DR 2-105 are permitted."

Even under this language, uncertainty remains as the provision permits the listing of a lawyer's telephone "numbers" (plural), and does not expressly prohibit the listing of numbers available at night, Sundays or holidays. Such additional listing was declared to be improper under former Canon 27. N.Y. State 81 (1968). There are many occasions when a client may be in urgent need of professional advice, outside a lawyer's usual office hours, and the listing of an alternative number may be an invaluable means of making legal counsel available to him. Cf. Canon 2. Accordingly, in the absence of explicit provision in DR 2-102(A)(5) to the contrary, and in view of the fact that the DR permits the listing of telephone "numbers", such listing is not improper. To the extent that N.Y. State 81 (1968) is inconsistent, it is modified.

The listing of a lawyer's firm name beneath his own, in a classified telephone directory, is a reasonable and proper means of identifying the lawyer, even though it may result in the firm's name appearing a number of times. The reference, in DR 2-102(A)(5) above, to the listing of a law firm "separate from that of its members and associates" is intended to permit an additional listing of the name of the law firm as a separate entity, rather than a requirement that it not be associated with the name of any partner. On the other hand, we would consider the listing of the firm name, followed by a column of names of its partners or associates, to be at variance with the obligation of a lawyer not to emphasize the importance, influence or success of himself or his firm.

The stating in a telephone directory listing of the name of the building in which the lawyer has his office, his suite number, postal zip number and cable address are proper means of identifying and locating a lawyer and as such are not objectionable. Cf. ABA 249 (1942).

The listing of patent lawyers under a separate heading in classified telephone directories is not improper. N.Y. State 106 (1969). The privilege, however, has not been extended to trademark or admiralty lawyers, notwithstanding DR 2-105(A)(1) and EC 2-14. Wise, Legal Ethics 151 (1970); N.Y. County 417 (1953); N.Y. County 274 (1933).

Although there is a present trend toward liberalizing the restrictions on the extent to which a lawyer may publicize himself in

order to assist the legal profession in fulfilling its duty to make legal counsel available within the meaning of Canon 2*, the existing Code does not permit a lawyer to hold himself out as a specialist, except in a reputable law list or legal directory or in the case of patent, trademark and admiralty lawyers. DR 2-102(A)(6); DR 2-105(A)(1). Unless and until the Code is amended, previous rulings limiting such publicizing of a lawyer's specialty in a classified telephone directory are operative.

* See N.Y. State DR 2-101(B) and DR 2-103(C), both as amended, effective April 19, 1975, relating to commercial publicity by a qualified legal assistance organization.