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## Bar Briefs

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## Bar Briefs

OPINION NO. 15  
OF THE ETHICS COMMITTEE OF THE COLORADO  
BAR ASSOCIATION, ADOPTED AUGUST 19, 1960

SYLLABUS

1. It is improper for any attorney, firm or group of attorneys to obtain or utilize any listing in the classified or non-classified sections of the telephone directory, which listing is designed to, or does in fact, draw special attention to such attorney, group or firm of attorneys.

2. It is improper to list the individual names of partners and associates in the telephone directory in a town in which they neither reside nor maintain regularly scheduled office hours.

FACTS

This opinion is concerned with the propriety of the following types of telephone directory listings of lawyers, groups or firms of lawyers.

1. Listings in boldface type in either the classified or the non-classified section.

2. The use of variations of the firm or group name in either the classified or non-classified sections, so as to obtain multiple listings of the same firm or group. For example, a firm or group which obtains separate listings under the names of "Jones, Brown and Smith", "Brown, Jones and Smith", "Smith, Brown and Jones", etc.

3. The listing, either in the classified or non-classified sections, of the names of the individual partners, members or associates of a group or firm of attorneys, under the name of the firm or group, with or without the office or home telephone or address of such individuals. For example:

"Jones and Smith  
Richard Jones  
Robert Smith"

4. In either the classified or the non-classified sections of the directory, using more lines than are necessary in showing the address and telephone number of the attorney, group or firm of attorneys. This includes the following:

(a) Listing the room or suite number in addition to the office building in which the attorney, group or firm is located, where more than one line is used to show both the office and the suite number and the building. For example:

"John Jones  
Suite 340  
Equitable Building"

(b) Listing both the name of the office building in which the attorney, firm or group is located, together with

the street address of the building, where more than one line is utilized for such purpose. For example:

"Jones and Jones  
Majestic Building  
209 16th Street"

(c) Utilizing two or more lines, where one would suffice for the listing of the name of the attorney, firm or group, and the building. For example:

"John Jones  
Majestic Bldg."

5. The addition of words in either the classified or the non-classified section implying or stating a "specialty", whether additional lines are utilized or not. For example:

"John Jones, Tax Attorney"

6. The addition of any descriptive word or words, other than the name and address of the attorney, firm or group, in either the classified or the non-classified sections. For example:

"John Jones, District Attorney"  
or  
"John Jones, Lt., U. S. N."

7. An attorney, firm or group of attorneys obtaining a listing entirely separate from the general classified listing for other attorneys. For example, obtaining a listing under the heading "Tax Consultants" in the classified section.

8. A law firm having partners or associates residing in both Town A and Town B lists in the telephone directory of Town A the name of the firm, the names of the partners and associates residing in Town A, and the names of the partners and associates residing in Town B.

## OPINION

### Canon 27

See opinions 53, 223, 241 (overruling 223), 284 (overruling 241) and 295 of the Committee on Professional Ethics of the American Bar Association.

Canon 27 of the Canons of Professional Ethics provides, in part, as follows:

"It is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations."

The prohibition against advertising by an attorney contained in Canon 27 is absolute, and admits of no exception. The word "advertise" is defined in Webster's dictionary (among other definitions) as "to call public attention to, especially by emphasizing desirable qualities . . ." and "to make conspicuous." The non-classified section of the telephone directory is not per se an advertising medium. Rather, it is provided by the telephone company as a

service to the public, and is obviously the only efficient method by which the telephone numbers of individuals may be easily located. All of the customers of the telephone company are listed unless they specifically request that they be omitted. Likewise, the listing of attorneys under the headings "Attorneys" or "Lawyers" does not of itself constitute advertising, but instead is an additional directory provided by the telephone company for the convenience of those using the telephone service, although an additional charge is made to those customers who request a listing in the classified section.

Normally, both the classified and the non-classified sections of the telephone directory are utilized by an individual seeking the telephone number, or possibly the address, of a specific lawyer already known to him. Ordinarily neither section of the directory would be used as a law list by someone attempting to select a lawyer. Consequently, the listing of a lawyer's name, address and telephone number in either the classified or the non-classified sections of a telephone directory does not in itself constitute advertising.

On the other hand, it is possible for an attorney to make use of the classified and non-classified sections of a telephone directory for the purpose of advertising. When the format of the attorney's listing is designed to or necessarily does call particular attention to the attorney, segregating or distinguishing him from his fellow lawyers, then the listing must be regarded as advertising and unprofessional.

There is an exceedingly fine line between the legitimate listing and one which constitutes advertising. The criteria of distinction between a proper listing and unethical advertising are fourfold:

1. Is the listing confined to the name, location and telephone number of the attorney, or is this information expanded upon through the use of extraneous descriptive phrases?
2. Does the listing utilize more vertical space in the directory than is necessary to impart the name, telephone number and location of the attorney?
3. Does the format or design of the listing necessarily cause it to stand out from the other lawyer-listings in the directory?
4. With regard to law firms or groups of attorneys associated together, does the firm or group obtain multiple listing through the use of variations in its firm or group name, or otherwise?

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In considering the specific types of listings set forth above it is arguable that each of the various listings may be used primarily for the convenience of the established client in locating his attorney. On the other hand, even though this may be the motivating factor behind the utilization of a listing of the type described in Paragraphs 1 through 7 under the heading "FACTS", nevertheless, the ordinary and normal use of such listings is to call particular attention to the attorney, firm or group involved. It is, therefore, the opinion of this Committee that it is improper to obtain or utilize in either the classified or non-classified sections of the telephone directory any of the forms of listings set forth in Paragraphs 1 through 7 in the portion of this opinion entitled "FACTS".

With regard to a listing such as described in paragraph 8 under "FACTS", it is the opinion of this Committee that it is proper for a law firm having one or more partners or associates resident in Town A, with the other partners or associates residing in Town B, to list in the telephone directory of Town A not only the firm name and the names of the partners and associates residing in Town A, but also the names of each of the individual partners and associates who reside in Town B but maintain regularly scheduled office hours in Town A. Within the limitations previously expressed in this opinion, the following listings are proper:

- a. The listing of the firm name in both Town A and Town B.
- b. Listing in the Town A directory the individual names of the partners and associates who actually reside in Town A, or who maintain regularly scheduled office hours in Town A.
- c. Listing in the Town B directory the individual names of the partners and associates who actually reside in Town B, or who maintain regularly scheduled office hours in Town B.

In conclusion it should be mentioned that the Committee on Professional Ethics of the American Bar Association, in its opinion No. 295, has stated that it is permissible for a lawyer to list in addition to his office telephone number an alternate number (which would probably be his residence number) under the heading "if no answer call" or "nights, Sundays and holidays, etc." While finding the practice permissible, however, the Committee opines that "listing numbers to call on nights, Sundays and holidays is not necessary and approaches commercialism."

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OPINION NO. 16  
OF THE ETHICS COMMITTEE OF THE COLORADO  
BAR ASSOCIATION, ADOPTED DECEMBER 2, 1960

*SYLLABUS*

1. A lawyer who appears as court appointed guardian ad litem in probate, or similar proceedings, and who renders only the services normally required by this office is entitled to a reasonable fee for his services but not a fee based solely upon the size of the estate involved.

2. A judge has the duty to review the charges made by his appointees. He should disallow the excessive portion of such charges, and, where appropriate, censure those who make excessive charges.

*FACTS*

A lawyer is appointed by the County Court to serve as guardian ad litem in the estate of a decedent or a mental incompetent. The lawyer attempts to collect a fee for his services that is dependent solely on the size of the estate, resulting in a fee in excess of that justified by the time spent or the responsibility involved.

*OPINION*

A lawyer has an obligation to assist in the administration of justice by accepting court appointments of various types. It is axiomatic that the lawyer who accepts an appointment should fulfill the trust imposed by that office to the best of his ability and with the utmost dispatch. It is well known that many appointments made by courts consist only of examining the court file in the matter and appearing at a hearing which is of short duration. In this type of appointment, the lawyer's compensation should be based substantially on the time expended, and not on the size of the estate.

When the appointment requires additional work, the lawyer should make a reasonable charge commensurate with those services. The size of the estate might then be one element used in determining what is a reasonable fee. At all times the appointed lawyer should be scrupulously fair with the court and with the client. The reason for the appointment is generally to represent the interests of a person deemed not capable of protecting himself because of lack of age or lack of mental capacity. To subject such a person to the additional hazard of protecting his property from the one appointed by the court to serve that purpose is indeed a miscarriage of justice.

In the final analysis it is the duty and obligation of the judge making the appointments to approve or disallow the charge for services made by his appointee. It is an obligation he cannot avoid since it is clearly a responsibility of his office.

Canon 12, Canons of Judicial Ethics, provides:

“Trustees, receivers, masters, referees, guardians and other persons appointed by a judge to aid in the administration of justice should have the strictest probity and impartiality and should be selected with a view solely to their character and fitness. The power of making such appointments should not be exercised by him for personal partisan advantage. He should not permit his appointments to be controlled by others than himself. He should also avoid nepotism and undue favoritism in his appointments.

While not hesitating to fix or approve just amounts, he should be most scrupulous in granting or approving compensation for the services or charges of such appointees to avoid excessive allowances, whether or not expected to or complained of. He cannot rid himself of this responsibility by the consent of counsel.”

A judge who refuses to review the charges made by his appointee, to disallow the excessive portion of such charges, and, where appropriate, to censure those who make excessive charges is neglecting a duty imposed upon him by law and by the Canons of Judicial Ethics.

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