

DELAWARE STATE BAR ASSOCIATION
Professional Ethics Committee

OPINION 1989-1

The Executive Director of the Delaware State Bar Association ("DSBA") seeks the Committee's opinion with respect to DSBA's annual membership directory. Specifically, DSBA has recently published the 1989 version of its annual Legal Directory,¹ which contains an alphabetical listing of Delaware lawyers and judges together with DSBA committee membership lists and other information of interest to lawyers. It is distributed to members of DSBA. This year, for the first time, the Legal Directory contains a separate section headed "AREAS OF PRACTICE," which is a paid listing by attorneys within some 28 categories or areas of practice. Each page of this section has a disclaimer at the bottom stating, "Listing of areas of practice does not represent official certification as a specialist in those areas. The disclaimer is set in type at least as large as the balance of the listings. The Executive Director of DSBA has requested the Committee's opinion as to this listing's compliance with applicable rules.

The "AREAS OF PRACTICE" section of the 1989 Legal Directory appears to be covered by Rule 7.1(b)(1) of the Delaware Lawyers' Rules of Professional Conduct. That section states:

A lawyer who advertises areas of practice shall either comply with Rule 7.5 or include the following disclaimer: 'Listing of areas of practice does not represent official certification as a specialist in those areas.'

The official comment to the Delaware Lawyers' Rules of Professional Conduct states that "(i)nfornation regarding an attorney's areas of practice helps the public identify and retain legal counsel appropriate to the particular situation." So long as any such information is balanced by the inclusion of the required disclaimer, any potential to mislead is minimized.

¹ The Executive Director of DSBA requested the Committee's opinion before publication of the 1989 Legal Directory and was given the Committee's opinion orally in 1988, although publication itself occurred prior to issuance of this Opinion. The Committee regrets any delay on its part in making this response.

Accordingly, it appears to the Committee that the 1989 Legal Directory's listing of "AREAS OF PRACTICE" is specifically permitted under Rule 7.1(b)(1).

The Committee would add one additional note for the benefit of DSBA's future directories. There does not appear to be any indication in the 1989 Legal Directory that the "AREAS OF PRACTICE" section constitutes a form of paid advertising. While it may be true that many or most lawyers who receive the directory will know that to be the case, a non-lawyer referring to it might conclude either that the attorneys listed under each area of practice were the only ones practicing in that area or that DSBA was endorsing the list of attorneys, notwithstanding the presence of a required disclaimer. An additional notice or disclaimer to the effect that the "AREAS OF PRACTICE" section is a paid advertisement by the attorneys listed would minimize such confusion.

In conclusion, the Committee believes that the "AREAS OF PRACTICE" listing in DSBA's 1989 Legal Directory is specifically permitted by the language of Rule 7.1(b)(1) of the Delaware Lawyers' Rules of Professional Conduct.