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What's My Name?

Labels, titles, egos and the bar

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Decades ago, when I was starting out in practice, *The New Yorker* ran a cartoon of a young man looking in the bathroom mirror, putting on his necktie and experimenting with ways to introduce himself. "I'm an attorney," he tried. "I'm a lawyer." "I do law."

Our two-dimensional colleague had a tough decision to make: he was searching for a label. In business and in society, the way we present ourselves impacts our relationships and our endeavors. The labels we choose can fashion our first impression upon others, so we are wise to select identifiers that help our cause.

Think back. The first time you heard of Honest Abe, you knew he couldn't lie. You may even still believe that. The Good Fairy and Casper the Friendly Ghost didn't scare you for a second, but the Wicked Witch of the West or the Big Bad Wolf might have given you pause, even before you knew anything else about them. Because such labels have the power to create lasting impressions, true or false, the Ethics Committee has a vested interest in regulating how attorneys present themselves to the public.

The emergence of the "elevator pitch" as an essential business tool underlines the importance of offering accurate, engaging information about ourselves in a brief span of time. Do you make people want to know more about you, or do they seem like they've already heard enough? Does your self-description suggest that you're an expert, or does it reveal pomposity? Do you use the same description of yourself when you speak as when you write? Does your promotional material reflect who you are?

We choose our labels as we choose our jewelry, clothing or hair style—to reflect or project a favorable image we have of ourselves. Much like our choice of fashion, the choice of label may depend upon the situation and the crowd. Will we be counselor, attorney at law, attorney, lawyer, legal expert or attorney and counselor-at-law tonight? How may we be introduced? What may we put on our card?

Even when attorney advertising was prohibited, the practice of distributing business cards (properly called "professional cards" by attorneys) was permissible, provided the cards were in dignified form. Dignity was paramount. Dignified cards contained no more than the

lawyer's name, firm and contact information. Any reference to academic degrees and honorary titles, professional certifications or relationships was *verboden*. Also unethical was any reference to an attorney's experience, areas of interest or foreign language ability.

In the last third of the twentieth century, consistent with the mandate of the First Amendment, the rules governing professional cards were relaxed. Now they permit the use of any information that is "factual and not misleading." In New Jersey, it must also be of a type that potential clients might consider important in making a decision about employing that attorney. Reference to academic titles ("Professor," "Instructor") degrees (CPA, LLM), professional affiliations, bar memberships and admissions, and foreign language proficiency are permitted.

Today, the same rules that govern the permissible content of an attorney's card also apply to our office stationary and letterhead. By extension, they apply to our advertising, publications, websites and interviews. The RPCs and a constellation of decisions set the guidelines. The Committee on Advertising, an agency of the Office of Attorney Ethics, is responsible for compliance and enforcement.

This brings us back to our cartoon lawyer. He is looking for a label; he already has a title. We all do. In America, all attorneys may be addressed as "Esquire." The historical roots of this ancient title are deep. In medieval England, "Esquire" was a suffix conferring or acknowledging a man's status somewhere above gentlemen and below knight (who was identified by the prefix "Sir"). In this country, the term is so closely associated with attorneys that, in many states, New Jersey among them, the use of "Esquire" by a person *not* a lawyer is outlawed as fraudulent.

Though forbidden to nonlawyers, the use of "Esq." by attorneys is unfettered. Consequently, its use is rapidly and regrettably evolving. Even beyond its obvious and necessary applicability to women, it has been diverted from worthy tradition. The title is *not* supposed to tell the world that you are a lawyer, although, of course, it does just that. Rather, it is an indication of respect used to address, in writing, a person already known by the writer to be an attorney.

Many lawyers, usually younger ones and particularly solos, refer to *themselves* as "Esquire." This is wrong. "Esq." should not appear on your business card or on your letterhead, nor should it be appended to your signature. An attorney should no more refer to herself as "Esquire" than a judge should introduce herself as "The Honorable" or a Pope would refer to himself as "My Eminence." Allow others to address you as "Esquire," but don't make it part of your name. When you wish to use a descriptive title in place of, or in conjunction with, your first name, content yourself with the word "attorney" (e.g., Attorney Johnson or Attorney Jamila Johnson).

The foregoing notwithstanding, two situations may lend themselves to the appropriate use of "Esq." by attorneys. The first is when submitting a blog post or sending an email, not on letterhead, where your legal knowledge will lend credence to your words or offer assurance to your reader that you are qualified to speak on legal topics. The second situation is when publishing a law-related book or article, and for the same reasons. Still, if you really like the way "Esq." looks on your card, and you prefer to eschew this advice, know that this is just a matter of style and tradition, not law. Violators are no longer disciplined for an inappropriate "Esq."

Another label that some attorneys unfortunately like is the title "Doctor." Since most attorneys' degrees are doctorates, there may be some temptation to gild the lily when reciting our credentials. Before the Advertising Era, New Jersey lawyers were not allowed to refer to themselves as "Doctor." In fact, we were not permitted make reference to any of our academic degrees, legal and otherwise, on our business cards or letterheads. This was considered self-aggrandizement and was an ethics violation, unless used by a lawyer affiliated with an institution (usually academic) where persons with doctorates were generally referred to by their degrees.

Today the use of the title "Doctor" by a non-academic attorney is legal, since attorneys may now indicate all of our academic accolades. Still, it is pretentious, and perhaps misleading, to call yourself "Doctor."

Another designation that may be misleading and pretentious is "Of Counsel." Often, of course, it is not. If we are of counsel to a firm, we may publicize that information. Our card and letterhead may so indicate. Many lawyers believe that having a colleague listed on a letterhead as "counsel to the firm" may lend that attorney's prestige to the firm. In return, the lawyer who is of counsel gains the benefit of her apparent association with the firm.

Unfortunately, the use of this device often has no real purpose other than to create a false impression of bigness. Sometimes it is used merely to make official an existing referral relationship. Neither of these is an acceptable "counsel" relationship, even under today's liberal rules. The area has been a gray one, and so the Office of Attorney Ethics has offered guidelines for acceptable use of the label. While not exhaustive, the list is illustrative and is intended to discourage more casual use of "of counsel."

The following may be called "Of Counsel:"

- (1) Special Counsel who has expertise in a specialized field of law and who will advise the firm or handle such cases for the firm on a recurring basis.
- (2) A prospective partner, usually a lateral hire, working with a firm during a period of "engagement."
- (3) A retired judge or partner who provides advice and guidance to the firm on a regular or as-needed basis.
- (4) An attorney who practices part time, due to personal or non-law related business.
- (5) A permanent senior associate not on track for partnership.

Should you have any other sort of "counsel" relationship, you might seek an advisory opinion as to its acceptability. Such a relationship created primarily for its appearance or promotional value is not likely to survive scrutiny.

It is natural that attorneys want to publicize the credentials we have earned and the titles we have acquired. It is also easy to do. Today, we may put them on our business cards and our letterhead. We may include them in social media profiles, feature them in our television ads, highlight them on our websites, and talk about them at our networking groups. We have great latitude in publicizing ourselves and our practices and in choosing our labels. Let us not abuse it.

The rules only compel us to keep our publicity honest and relevant. The dignified part is up to us. •

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Civil Practice

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