



## Committee on Professional Ethics

Opinion #446 - 12/ 3 /76 (88-76) Topic: Workmen's Compensation;  
employment of licensed  
representative by lawyer.

Digest: Not improper for lawyer to  
employ licensed representative  
to appear before the Work-  
men's Compensation Board.

Code: EC 3-6  
DR 3-101

### QUESTION

May a lawyer employ a licensed representative to appear on behalf of his client in a workmen's compensation proceeding in which the lawyer has entered an appearance?

### OPINION

Under the law of this State, qualified laymen may be licensed to represent claimants or self-insurers in proceedings held before the Workmen's Compensation Board. Workmen's Compensation Law, §§24-a and 50(3-b). These laymen are known as "licensed representatives".

For many years it was considered proper for a lawyer to retain a licensed representative to appear in his stead, provided full disclosure of the status of the licensed representative was made, the informed consent of his client was obtained and the lawyer assumed responsibility for the manner in which the matter was handled. Thus, in a joint opinion issued by The Association of the Bar of the City of New York and the New York County Lawyers' Association, it was said:

"A lawyer may employ a lay licensed representative on a salary basis to appear for him and try cases before the Workmen's Compensation Board as long as the layman restricts his activities to those which may lawfully be undertaken by him. In fairness to the client the lawyer must disclose the fact that he is retaining a layman to try the client's case. Moreover, the lawyer must assume responsibility for the layman's conduct of the action." N.Y. City 833 and N.Y. County 463 (1958).

In 1973, some uncertainty arose concerning the ethical propriety of such representation by reason of an advisory opinion of this Association's Unlawful Practice of Law Committee (UPL) which held that a licensed representative who was retained by a lawyer, rather than the actual party to the proceeding, had exceeded his statutory authority and was therefore engaged in unlawful practice of law. UPL 16 (1973). The UPL did not consider, however, whether or to what extent the lawyer retaining the licensed representative had discussed the matter with his client.

This year, the UPL effectively modified its prior opinion and held, inter alia, that a "lay employee" of a lawyer could appear on his behalf "if such employee is independently licensed to appear before the Board". UPL 35 (1976).

It is not the function of this Committee to pass on matters of law or what constitutes unlawful practice; and, certainly, it would be unethical for a lawyer to aid the unauthorized practice of law. See, DR 3-101. Nevertheless, in view of the most recent opinion of the UPL, we believe it is now both necessary and appropriate to remove any remaining uncertainty concerning the ethical propriety of a lawyer retaining a licensed representative to appear on behalf of his client.

We, therefore, hold that, unless and until such time as licensed representatives are prohibited by law from being retained by lawyers for the purpose of representing their clients before the Workmen's Compensation Board and to the extent that they are permitted by law to represent such persons, lawyers may ethically retain them for that purpose, provided the following conditions are satisfied:

1. The lawyer must fully disclose the status of the licensed representative, explaining that he is not a member of the Bar and the consequences thereof;
  2. The lawyer must obtain the clear and informed consent of the client to the proposed retention of a licensed representative; and
  3. The lawyer must assume responsibility for the manner in which the matter is handled by the licensed representative, ever mindful of those aspects of his representation that may not be delegated. See, EC 3-6 and Guidelines for the Utilization by Lawyers of the Service of Legal Assistants, adopted by the New York State Bar Association on June 19, 1976.
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