

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

OPINION

Canon 12 sets forth six factors to be considered in fixing fees, of which only one is a fee schedule adopted by a Bar Association. To use such a schedule as the sole standard, whether the fee fixed be greater or less than the schedule or exactly in accordance therewith, is, in the opinion of this Committee, improper.

Merely to depart from the fees recommended in such a schedule is not unethical where the departure results from consideration of the other factors listed in the Canon.

But to let it be known, by whatever means, that a lawyer will customarily charge for his services less than the recommended fees set forth in a duly adopted schedule is not in accordance with Canon 12 and is unethical as a form of solicitation and advertising.

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Opinion #6 - 1/29/65 (6-64)

Topic: Advertising.
Announcement of Specialty.

Digest: Lawyer may send dignified announcement of his specialization to other lawyers so long as it does not constitute a statement or representation of special experience or expertness.

Canons: Former Canons, 27, 46

QUESTION

The attached letter is proposed to be circulated among members of a local Bar Association. The Ethics Committee of the local Bar Association requests an opinion as to whether the proposed letter violates Canon 27 or whether the proposed letter complies with the exception provided in Canon 46 of the Canons of Professional Ethics.

OPINION

Canon 27, which prohibits advertising directly or indirectly, seemingly includes the advertising of a specialty as well. While the Amendment thereto permits proctors in admiralty, patent attorneys and trademark attorneys to indicate their specialty on a letterhead or shingle, workmen's compensation law is not a recognized specialty.

Canon 27 must be read, however, in conjunction with Canon 46 which, as amended on February 21, 1956, states as follows:

"A lawyer available to act as an associate of other lawyers in a particular branch of the law or legal service may send to local lawyers only and publish in his local legal journal, a brief and dignified announcement of his availability to serve other lawyers in connection therewith. The announcement should be in a form which does not constitute a statement or representation of special experience or expertness."

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Prior to the Amendment of 1956, the American Bar Association insisted upon strict construction of Canon 46, but the Amendment permitted announcements by lawyers to other lawyers of special branches of law by mailed notices and in law journals. (See Drinker - Legal Ethics, pp. 233-238 and pp. 242-245 for discussion of this matter.)

The New York City and County Committees have long permitted and approved the announcement of special branches by mail to lawyers and have not restricted such announcements to branches which "constitute a specialized legal service." Among other branches held to be specialized are workmen's compensation claims. The rulings of the New York Committee provide a precedent for a dignified announcement that a lawyer is engaged in rendering a specialized legal service to other lawyers.

It is our opinion that the attached letter, in its present form, is undignified and constitutes a statement or representation of specialized experience or expertness and is, therefore, objectionable. We suggest that paragraph fifth of the proposed letter be modified to read as follows:

"Former president of the New York Workmen's Compensation Bar Association."

P R O P O S E D L E T T E R

Dear Colleague:

In connection with the recent announcement of my continuation of practice of the Workmen's Compensation Law at the above address, I would like to direct your attention to the following facts pertinent to my background and experience:

Assistant Attorney General in the Department of Law of the State of New York from 1932 to 1939, handling matters involving all aspects of the Workmen's Compensation Law, including appeals to the Appellate Division and Court of Appeals.

Compensation Referee from 1939 to 1943.

Since 1943, representing compensation claimants before referees throughout New York State, appearances before the Workmen's Compensation Board, and the appellate courts.

Organizer and former president of the New York Workmen's Compensation Bar Association (which this year played a major role in the official celebration of the 50th Anniversary of the enactment of the Workmen's Compensation Law).

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I am in a position to appear for compensation claimants at hearings before the referees and the Workmen's Compensation Board, including the preparation and arguments of applications for review, and also all proceedings and arguments before the Appellate Division and Court of Appeals, and thus, provide a needed specialized legal assistance to lawyers representing compensation claimants in X County.

Yours Very truly,

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Opinion #7 - 1/29/65 (7-64)

Topic: Advertising.
Offer of Free Legal Services in
Newspaper.

Digest: Improper for lawyer to publish
offer of free legal services for
prosecution of a particular suit.

Canons: Former Canons 27, 28

QUESTION

A series of four articles in two newspapers reported that a lawyer, practicing in the city where the newspapers were located, had offered the services of his law firm for a proposed action for reapportionment of the County Board of Supervisors.

One of the articles quoted the lawyer as saying, "Our firm will volunteer its services without cost to prosecute such an action if such were brought. It would be a matter of public service to the people of the county who are being denied representation." The article further quotes the lawyer as saying, "I think I can have such a client without much trouble. But I can't name anyone right now."

Another article reports that the lawyer seeks three plaintiffs for the proposed reapportionment suit and quotes the lawyer as saying, "One would be adequate, of course, but I thought I'd go at it this other way so these various areas could be represented."

What is the propriety of this advertising?

OPINION

In the opinion of the Committee the conduct of the lawyer is not ethical.

Canon 28 of the Canons of Professional Ethics prohibits a lawyer from encouraging litigation, except in certain instances where litigation is dictated by the interests of a client. See Opinions of the Committee on Professional Ethics of The Association of the Bar of the City of New York, Numbers 39, 64, 113, 128, 586, 717. Both the letter and spirit of Canon 28 were violated by the lawyer's offer of free legal services. It is very obvious that the lawyer had not been retained by a client to bring an action for reapportionment but was