

NEW YORK STATE BAR ASSOCIATION  
Professional Ethics Committee Opinion

OPINION

In the opinion of this Committee the proposed announcement would not be proper. Under Canon 27 the inquirer may include in an announcement, sent to non-lawyers with whom he has personal relations and to other lawyers, a statement of his intention to specialize in patent law. (Joint Opinion No. 375 of The Association of the Bar of the City of New York and of the New York County Lawyers' Association, No. 375.) An announcement may refer to a particular public office from which the lawyer is returning to private practice but it may not refer to prior private offices or relationships. (Same Joint Opinion and Opinions Nos. 681 and 740 of The Association of the Bar of the City of New York.)

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Opinion #14 -- 9/20/65 (4-65)      Topic: Disclosure of Client's Confidences.

Digest: Lawyer should take steps to see that former client does not successfully perpetrate fraudulent claim, and disclosure of that client's confidences to avoid a crime would be proper.

Canon: Former Canon 37

QUESTION

A lawyer was consulted by a client who claimed to have been a passenger in an automobile involved in a one-car accident. After claim had been made against the operator and also against the owner of the vehicle, the client told the lawyer that the client was not in fact a passenger but was the unlicensed operator of the automobile. The lawyer thereupon advised the client that pursuit of the claim would be a fraud and that the client had no cause of action, advising that the client drop the matter. The lawyer has now been advised by another lawyer that the client seeks the other lawyer's services in pressing the claim.

Concerned by the fact that the information was given him in confidence and by the fact that the client is about to perpetrate a fraud by making a false claim, the lawyer inquires whether he is bound by the confidential communication and prevented from advising the new attorney of the facts and likewise prevented from exposing the fraud if it is continued.

OPINION

In the opinion of the Committee the lawyer should:

- (a) Advise the client in writing that the lawyer is obligated to disclose the true facts and give the client an opportunity to release the claim;
- (b) Failing an acknowledgment that the claim is released, the lawyer should advise the new attorney and the person or persons against whom the claim has been made of the true facts.

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Anything short of a release of the claim or notification of the defendants would, of course, mean that the client could take advantage of some third lawyer whose identity would not be known, and the claim might be pressed quietly to a fraudulent conclusion.

Canon 37 specifically provides that "the announced intention of a client to commit a crime is not included within the confidences which he (the lawyer) is bound to respect. He may properly make such disclosures as may be necessary to prevent the action to protect those against whom it's threatened".

See Opinion No. 84 New York County Lawyers' Association on the same subject.

See U.S. against Clark, 289 U.S. 1 (53 Supreme Court 465), wherein Judge Cardozo said in part, "There is a privilege protecting communications between attorney and client. The privilege takes flight if the relation is abused. A client who consults an attorney for advice that will serve him in the commission of a fraud will have no help from the law. He must let the truth be told".

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Opinion #15 - 10/25/65 (6-65) Topic: Appearance of Partnership.

Digest: Improper for several attorneys who share a suite of offices to use a firm name and hold themselves out to the public as a partnership when they are not partners.

Canon: None

QUESTION

May several attorneys who share a suite of offices use a firm name and hold themselves out to the public as a partnership when they are not in fact partners?

OPINION

The proposed arrangement would be improper. Canon 33 forbids lawyers to use false, misleading, assumed or trade names. The proposed partnership name would fall under this ban since it falsely suggests the existence of a partnership when there is none and in addition the name would be an assumed or trade name. See Opinion No. 607 of the Committee on Professional Ethics of The Association of the Bar of the City of New York.