NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

QUESTION

An attorney suffered a fire loss in his office. The insurance company has asked permission to use the attorney's name in a testimonial to be contained in an advertisement praising the efficiency with which the company, agent and adjuster handled the claim and the personal attention of the adjuster and agent. The advertisement would not state that the attorney is a lawyer. The attorney would not receive compensation for the use of his name and he does not represent the insurance company or the advertising agency as attorney.

Would authorization to publish the testimonial violate the Canons of Ethics?

OPINION

It is the opinion of the Committee that the use of the name of a member of the Bar in the proposed testimonial would be proper and not in violation of Canon 27 of the Canons of Professional Ethics.

Informal decision #C788 (12/11/64) of the Committee on Professional Ethics of the American Bar Association states, "This Committee has decided that the question whether an attorney should permit his name to be used in connection with a testimonial for a commercial product is a matter of taste and not ethics". This was also the opinion of the Professional Ethics Committee of The Association of the Bar of the City of New York dated January 17, 1940. The facts are distinguished from those contained in opinion #31 (6/8/66) of the Committee on Professional Ethics of the New York State Bar Association in that no identification of the individual as a member of the Bar is contained in the proposed testimonial.

The Committee refrains from comment upon the propriety of a member of the Bar participating in such testimonials.

Opinion #36 - 11/30/66 (12-66) Topic: Advertising.
Announcement of Tax Specialization.

Digest: Lawyers may send announcement of tax specialization to other lawyers only.

Canon: None

QUESTION

S. is a New York attorney who has become increasingly active in tax matters. Although not a certified public accountant, he has an accountancy background which is useful to him in the tax field.

W. is a member of the Florida Bar, has no present practice, is a resident of New York who has passed the New York Bar examination and is waiting admission to the New York Bar. He is presently employed on a full-time basis as a tax attorney for a large corporation located in New York. Until quite recently he was one of the regional counsel with the Treasury Department handling tax matters and prior to that was a special agent for the Treasury Department.

S. proposes to form a partnership with W., after his admission to the Bar in New York, for the sole purpose of practicing tax law. The net profits from the tax practice will be shared equally by the two lawyers. Any non-tax worked handled by S. will be continued to be handled by him on an individual basis and not by the partnership, and should general matters be brought in by W. in the future, he will either handle them himself or refer them to S.'s office on a non-partnership basis. At the outset, no letterhead for the firm is proposed and S. will continue to pay the rent and other office expenses, although later there may be some allocation of expenses between the two individuals. The corporation with which W. is associated will know of the proposed association, which will not infringe on his full-time position with the corporation as W. will work for the partnership only in the evening and on weekends.

After the admission of W. to the New York Bar, S. proposes to send out announcements to members of the Bar only, worded substantially as follows:

W.
(formerly regional counsel with
the U. S. Treasury Department)

-and-

S.
both members of the New York Bar,

announce
their association specializing in
tax practice

at
The Building
Suite 1622
New York, N. Y.

OPINION

Under the circumstances, the proposed form of notice is proper provided it is sent to lawyers only.

It is not improper for an attorney returning to private practice from a government position, to state in his professional announcement the particular public office from which he is returning. "Such a statement should not go beyond naming the department or agency of the Government with which the attorney served and the title of the position which he held therein. The terms of the announcement and its physical setup should be such as to avoid any implication that the attorney is seeking to announce that he is specially qualified to handle matters dealt with by such agency or department or in which he gained experience while holding public office." (Joint Opinion No. 375 of New York County Lawyers' Association and The Association of the Bar of the City of New York.)

A notice which states or implies a particular field of specialization, other than patents, trademark and admiralty law, is not permitted to be sent to laymen because it constitutes improper advertising or solicitation. Since the partnership in this case will not, as such, engage in practice in any other field, it would be improper not to mention the field of specialization, because to omit it would cause the announcement to imply that the lawyers are partners for other fields as well. This would be a misrepresentation. See Opinion No. 15 of this Association, published in the New York State Bar Journal of August, 1966, page 381.

Opinion #37 - 11/30/66 (8-66)

Modified by #37(a).

Topic: Champerty.
Assumption of Responsibility for Litigation Expenses.

Digest: Lawyer's assumption of personal responsibility for client's medical expenses would be improper.

Canon: Former Canons 10, 42

QUESTION

An Attorney reports that doctors in the area in which he is practicing, have taken the position that an attorney representing a claimant in a negligence case must assume personal responsibility for the physician's fee for issuing a medical report concerning the injuries sustained, the physician's fee for examination of the claimant prior to testifying, and his fee for a conference with the lawyer concerning the testimony the doctor will give at the trial. Also,they require the attorney to be personally responsible for, and to pay for the doctor's testimony (attendance) at the trial itself.

Query: Is it ethically proper for an attorney to assume personal responsibility for such charges which in some cases are stated to amount to several hundreds of dollars