NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

QUESTION

A local Bar Association has asked the opinion of this Committee on the following question: May an attorney, without violating Canons 27 and 42 of the Canons of Professional Ethics, mail the following notice to attorneys only?

FOR ATTORNEYS ONLY
Complete Mexican Divorce Service

$225

Includes Separation Agreement If Required.

Associated With Mexican Attorney

All Particulars and Arrangements Handled.
Rapid Service, Absolute Satisfaction.

JOHN DOE
Attorney at Law
2 Anyone Street
Doe, N. Y.
(000) DOE-00000

OPINION

The announcement is condemend as being in bad taste, crass commercialism and improper advertising.

Opinion #43 - 1/26/67 (24-66) Topic: Legal Services for Indigents.

Digest: Lawyers may participate in the work of community law offices for the poor if the Appellate Division grants such approval.

Canon: Former Canons 27, 28, 35, 47

QUESTION

The Committee on Professional Responsibility of this Association has requested this Committee's opinion as to whether various plans for providing legal services to persons who otherwise might not be able to afford them, and the publicizing of the availability of such service, and the participation in such plans by lawyers on a volunteer basis or as paid employees, are permissible under the Canons of Professional Ethics.

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OPINION

At the instance of the Office of Economic Opportunity (OEO), the Executive Committee of this Association unanimously adopted a resolution pledging the New York State Bar Association to cooperate with the Office of Economic Opportunity in making legal services available to the poor. Substantial funds have been appropriated by the Federal Government to finance such programs, and they have the endorsement and approval of the House of Delegates of the American Bar Association and of the present and past Presidents of the ABA.

In 1960 the United States Supreme Court in Gideon v. Wainwright, 372 U.S. 335, held that states must supply counsel at public expense to indigent persons charged with serious crimes. This placed a tremendous and immediate burden on all lawyers under their oaths never to reject the cause of the defenseless or oppressed. This burden was vastly increased in 1966 when the Supreme Court in Miranda v. Arizona, 384 U.S. 436, in an opinion by Chief Justice Warren, writing for a majority of five, stated that before interrogating a person in custody, law enforcement officials must tell him that he has a right to remain silent; that anything he says may be used as evidence against him; that he has the right to consult with a lawyer and have the lawyer with him during interrogation; and, if there is any doubt as to his financial resources, that a lawyer will be provided to represent him if he is indigent.

It is thus obvious that the conventional means of the organized bar to aid indigents through legal aid societies, legal referral services and appeals for volunteers, and the public defender systems are wholly inadequate to cope with the rapidly rising tide of problems. Our former President, Orison S. Marden, now President of the ABA, from his intimate years of experience with Legal Aid, has admitted that all too few of the existing Legal Aid offices are adequately covering the requirements of their own localities and that many are hampered by poorly paid and inadequate staffs (19 Wash. & Lee L.Rev. 153).

At this point the OEO entered the picture. As stated by R. Sargent Shriver, Director of the O.E.O.:

> "The purpose of the Poverty Program is to root out *** causes of resentment, hostility, despair and cynicism. The function of the Legal Services Program is to marshal for poor people the aids and advocacy which attorneys traditionally render for clients *** be they rich or poor."

Shortly after the opinion of this Committee was requested, Judge Breitel, speaking for a unanimous Appellate Division of the First Department, in an opinion publised on page 1 of the November 17 issue of the New York Law Journal, refused to approve, pursuant to Section 280 of the New York Penal Law, the certificates of incorporation of three of the corporations proposing to establish neighborhood law offices for disadvantaged members of the community. The Court recognized the importance of the programs proposed and indicated that while hospitable to the view that new institutions must be fashioned to function alongside traditional legal aid societies, certain guidelines which the Court laid down must be met by the sponsors of the new institutions in any amended applications which may be filed.

The following Canons of Ethics and statutory provisions are applicable to the problem put to this Committee:

Canon 27. Advertising Direct or Indirect.

Canon 28. Stirring Up Litigation, Directly or through Agents.

Canon 35. Intermediaries. This canon provides that professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between the client and the lawyer and provides that a lawyer's relation to his client should be personal, and the responsibility should be direct to the client.

Canon 47. Aiding the Unauthorized Practice of Law.

Section 280 of the Penal Law, prohibiting the practice of law by corporations.

It is significant that Canon 35, relating to lay intermediaries, provides:

"Charitable societies rendering aid to the indigents are not deemed such intermediaries."

Section 280 of the Penal Law of this State, prohibiting the practice of law by corporations, also provides that it shall not apply to organizations organized for benevolent or charitable purposes or for the purposes of assisting persons without means in the pursuit of any civil remedy when such organization or incorporation is approved by the Appellate Division.

The New York Times in an editorial of Monday, December 12, 1966, entitled "Lawyers for the Poor", refers to this decision and to the principal stumbling block that has been created by the requirement of the Office of Economic Opportunity that the poor have a direct voice in policy making and states that, unless an accord is reached soon, the city may lose $3.5 million in Federal funds.

Since this Committee does not render opinions on questions of law, we construe the pending question as a request for a ruling on the propriety of lawyers, whether as volunteers or as paid employees, participating in the program for community law offices for the poor, if the certificates of incorporation should be approved by the Appellate Division on resubmission.

If the Appellate Division grants such approval, it would be our opinion that lawyers may so participate in the work of community law offices for the poor.

In rendering this opinion we have in mind that the Canons of Professional Ethics are not criminal statutes but, as stated in their preamble, are intended as a general guide to the profession, and we call attention, also, to the oath of admission of lawyers which provides in part:

> "I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice."

It would be unfortunate in the extreme if the Canons of Professional Ethics should be construed to make legal services unavailable to a very large segment of the American public who cannot afford to pay for such services, and if the Canons should be so construed by the courts of this State, it is our opinion that the Canons should be promptly amended by the New York State Bar Association by whom they were adopted.

In this connection we call attention to the decision of the United States Supreme Court in NAACP v. Button, 371 U.S. 415 (1963), upholding the right of the NAACP, its members and its lawyers, under the First Amendment to associate for the

purpose of assisting Negroes who seek legal redress for infringement of their constitutional guaranteed rights. See, also, Brotherhood of R.R. Trainmen v. Virginia ex rel. Virginia State Bar, 377 U.S. 1 (1964).

Attention is called to a comprehensive article in the 41 Notre Dame Lawyer, 961 (1966), on ethical problems raised by neighborhood law offices. The author suggests that the Button case presents a new constitutional dimension to the problem and states:

> "It is submitted that the constitutional right of an indigent to be made aware of the availability of legal assistance is of equal constitutional significance as that of a Negro to be channeled to the legal staff of the NAACP. There can be no basis for a distinction between the rights of a racial minority and those of an economic minority within the meaning of the first amendment."

We have also considered the opinion of the Court of Common Pleas in Philadelphia, where it was the duty of the Court under the Non-Profit Corporation Law to determine whether the purpose or purposes given in the articles of incorporation are "lawful and not injurious to the community". Judge Alexander, on account of the nationwide importance of the program of the OEO, considered the whole program, as well as the questions of ethics which have been discussed above, and concluded:

> "The Court further finds that the proposed CLS program serves the best interests of the Philadelphia community and of the Bar. The Philadelphia Bar Association has come forward with a program responsive to the great challenge of our times reflecting the highest traditions of the Philadelphia Bar, the oldest association of the organized Bar in America.
>
> "The Philadelphia lawyers have overwhelmingly accepted the challenge that this opportunity affords in another area in the life of the poor to relieve the burden under which nearly a fifth of American families suffer."

In the Philadelphia case it is true that the statute involved is different from our penal statute prohibiting the practice of law by coporations, and it is true that the proposed Philadelphia program is somewhat different from that before our Appellate Division. Yet the Court urged the proponents and opponents of the plan to confer and reconcile their differences, and the certificate of incorporation in question was changed. We trust that difficulties pointed out by the Appellate Division in New York likewise be resolved.

We also call attention to Opinion No. 307 of , 1962 of the ABA approving participation by lawyers in annual periodic checkup programs, and to the opinion of this Association on the same subject dated September 10, 1963. Both opinions approve institutional advertising of such programs for the benefit of the public, even though in some instances financial benefits may inure to the benefit of the members of the bar, subject to certain restrictions mentioned in the opinions. To the same effect, see, also, opinions of the ABA No. 179, dealing with radio programs regarding the drafting of wills, Nos. 205 and 227 permitting institutional advertising of lawyer-referral programs, and Opinion No. 201 of the Illinois Ethics Committee sustaining bar association institutional advertising of checkup plans.