

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #98 - 1/30/69 (27-68)

Modified by 416

Topic: Circular announcing free legal services by union lawyers.
Digest: Circular improper where named lawyer's abilities are publicized and where announcement of free legal services to union members is not limited to matters relating to employment.
Canons: Former Canons 27, 35, 47

QUESTION

In an employee representation election campaign, union officers have distributed to prospective members a circular which announces "free legal service" for union members, giving the name of a specific union lawyer with whom they are invited to meet.

The circular is headed in large boldfaced stenciled letters: "FREE LEGAL SERVICE". Also in prominent stenciled letters is an invitation to "MEET ATTORNEY [NAME]".

The circular (with solid capitals; underlining, etc. as in the original and with only specific identification deleted) reads as follows:

Below the boldfaced heading "FREE LEGAL SERVICE" appears the following:

"Every member of . . . [name of union and local] . . . is entitled to free legal service even if this means going into Court. This is the individual service we're glad to give our membership.

"The attorneys who represent you on your day to day problems will also be the ones who will be sitting with the union committee when [contract] negotiations . . . will take place. This will be immediately after the . . . employee election.

". . . [OUR UNION] . . . ATTORNEYS KNOW YOUR PROBLEMS - KNOW WHAT . . . EMPLOYEES' NEEDS ARE AND WHAT THEY WANT - KNOW HOW TO GET IT AND HOW TO SPELL IT OUT IN A CONTRACT."

Below the words "MEET ATTORNEY . . . [NAME] . . .", appears the following:

"In the coming weeks . . . [Name of union and local] . . . will be holding meetings throughout the State. Attorney . . . [Name] . . . will be there. He'll tell you what we are going to fight for. You tell him what more we should ask for.

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"SUPPORT. . .[NAME OF UNION AND LOCAL]. . ."

The circular closes with the typewritten names of the president of the local and the director of the parent union, who are identified as holding these two offices.

Our Committee has been asked two questions:

1. Is it professionally proper for an attorney to permit the use of his name in circulars of this type?
2. Are there limits on an attorney's right to accept employment from a union to perform free legal service for union members?

OPINION

1. In the opinion of the Committee, an attorney should not permit a client to publicize his name and legal ability as in the above described circular. This form of publicity is lacking in dignity, tends to lower the tone of the profession, and operates as an indirect advertisement for professional employment, all in violation of Canon 27.

2. In United Mine Workers v. Illinois State Bar Association, 389 U.S. 217, 221-222 (1967), the Court stated:

"We hold that the freedom of speech, assembly, and petition guaranteed by the First and Fourteenth Amendments give petitioner the right to hire attorneys on a salary basis to assist its members in the assertion of their legal rights."

Our Committee in N.Y.State 76 recognized that the United States Supreme Court's decisions in the United Mine Workers case, in Railroad Trainmen v. Virginia State Bar Association, 377 U.S. 1 (1964) and in NAACP v. Button, 371 U.S. 415 (1963), had raised "substantial uncertainties . . . as to the extent to which group legal services programs, previously held to be ethically improper, should now be permitted." We also announced that "under the present doubtful state of the law, and in the absence of amendments to Canons 27 and 35, we are not prepared to approve programs not clearly covered by the three cases cited above."

It is not clear from the circular here utilized whether there are any limits on the kind of free legal services which would be performed for members. If such services are limited to matters relating to employment, including injury and compensation claims arising out of employment, the union legal service program would appear to be covered by the principles of the three Supreme Court decisions. (Cf. N.Y.State 80.) Absent, however, authoritative extension of these decisions or amendments to Canons 27 and 35, we cannot approve the acceptance of employment by an attorney from a union to render free services to individual union members on matters wholly unrelated to employment.