

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

The public must be assured that incumbent judges, whether they serve full or part-time do not and of equal importance, do not appear to, engage in improper conduct. Unless the judiciary has the confidence of the public, the high esteem in which the Bench should be held will be tarnished beyond recall. The sharing of a judge's salary would expose the judge to at least the suspicion that those with whom he shares it could influence his conduct as a judge. We find no contravening interest which would permit part-time members of the judiciary to share their salaries with members of their law firms.

Opinion #211 - 11/22/71 (43-71)

Topic: Advertising Bar
Association Pamphlets

Overruled (in part) by 540

Digest: Pamphlets on legal
topics may not be
used for personal
gain.

Code*: Canon 2
EC 2-2; 2-3; 8-3
DR 2-104.

QUESTION

May an attorney teaching an adult education class distribute New York State Bar Association published pamphlets to his class with his name stamped thereon?

May such pamphlets be distributed to the general public by a judicial candidate?

OPINION

The distribution of New York State Bar Association published pamphlets to clients and friends that in no way refer to any specific lawyer or law firm is permitted. Canon 2; N.Y. State 46 (1967); ABA Inf. 846 (1965).

This exception to the prohibition against advertising and against the suggestion of the need for legal services is permitted if motivated by a desire to benefit laymen and the public and is carried out in such a way as to obviate the impression that such is being done to increase professional employment. EC 2-2; EC 2-3; EC 8-3; DR 2-104; ABA 121 (1934); ABA Inf. 846 (1965).

Distribution of these pamphlets to friends and clients or under such circumstances as will not give rise to the appearance that the distribution is for personal gain is commendable. Thus, the distribution of such pamphlets as a teaching aid to a class is permissible provided there is not contained thereon or therein the name of the attorney teacher, lawyer or law firm that may have procured and distributed such pamphlets. ABA Inf. 631 (1963); Drinker, Legal Ethics 257 (1953).

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Use of New York State Bar Association pamphlets in a political campaign would tend to depreciate their value in the eyes of the public and suggests an attempt to give the appearance of support by the Bar Association to a particular candidate. Such use would be improper.

Opinion #212 - 11/22/71 (44-71)

Topic: Withdrawal from employment for non-payment of fee.

Digest: Failure to pay fee does not warrant lawyer's refusal to file final decree where court has not granted permission to withdraw.

Code*: DR 2-110(A)(2), (3);
DR 2-110(C)(1)(f);
EC 2-32.

QUESTION

May an attorney who represents the plaintiff in a divorce action, who has received a retainer, and who is to receive the balance of his fee in a second installment, refuse to file the final decree of divorce until the client pays the last installment on the retainer?

OPINION

If a lawyer desires to withdraw from a matter that is pending before the court, the proper procedure is to request the court's permission. N.Y. State 187 (1971); N.Y. State 178 (1971). Mere failure to pay an agreed fee, which is not deliberate, is not a ground for requesting such permission. Where, however, a client deliberately disregards an agreement or obligation to his lawyer as to expenses or fees the lawyer may request the court for permission to withdraw. DR 2-110(C)(1)(f).

Accordingly, it would not be proper for a lawyer to refuse to file a final decree of divorce without obtaining the court's permission to withdraw from his employment. If he is permitted to withdraw, he shall nevertheless comply with the provision of DR 2-110(A)(2) and (3) which provides:

"In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules."