

NEW YORK STATE BAR ASSOCIATION  
Professional Ethics Committee Opinions

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."

NEW YORK STATE BAR ASSOCIATION  
Professional Ethics Committee Opinions

"A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned."

In addition, the lawyer should cooperate with counsel subsequently employed and otherwise endeavor to minimize the possibility of harm to his client. EC 2-32; See, N.Y. City 364 (1936).

Opinion #213 - 11/22/71 (46-71)

Topic: Solicitation

Digest: A lawyer may permit the use of his name in a businessmen's brochure but not the fact that he is an attorney.

Code\*: DR 2-101(B)

QUESTION

May a lawyer member of a businessmen's association include his name and occupation in a brochure designed to attract business to the area?

OPINION

A lawyer shall not publicize himself nor shall he authorize others to do so on his behalf. DR 2-101(B) provides in part "A lawyer shall not publicize himself, his partner or associate as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in city or telephone directories or other means of commercial publicity, nor shall he authorize or permit others to do so in his behalf."

Only the listing of the name of the attorney without reference to his occupation in such brochure would be permitted. See N.Y. State 201 (1971).

Opinion #214 - 11/22/71 (47-71)

Topic: Conflict of Interest  
Town Justice and  
Assistant District  
Attorney Office  
Associates.

Digest: An attorney may not act as town justice in a town within the county in which his office associate is district attorney.

Code\*: Canon 9  
Canons of Judicial Ethics: 4, 13,  
26.