

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

While the court in that case pointed out that the Canons of Ethics do not apply to anyone except to a member of the bar, and that the propriety or impropriety of the publication depends primarily on the extent of the lawyer's participation in the publication; it seems apparent that the proposed news release submitted for our consideration would hardly be published without the consent of the attorney-author.

In his work entitled "Legal Ethics", Henry S. Drinker states, at page 248:

"great care should, however, be exercised by lawyers and judges in endorsing law books sold by publishers; both the lawyers and the publishers should refrain from reference to any specific causes and also from reference to the lawyer's position generally or in the particular field of work covered."

The publication involved in the present inquiry is of interest to, and to be used only by, the legal profession. The release of the proposed announcement to daily newspapers or other lay publications as distinguished from such a periodical as the "New York Law Journal", cannot be inspired solely by the desire to promote the sale of a large number of books but rather by the wish of the publisher or its advertising agent to make the attorney-author happy with his employment. In other words, it would seem that the sole purpose of such a news release would be for the attorney's aggrandizement.

It is felt that the proposed news release falls under the category of indirect advertising and we cannot approve its publication in the form proposed.

Opinion #4 - 11/19/64 (4-64)

Topic: Communications with Opposing Party.
Negotiations with Lay Adjuster.

Digest: Not improper for lawyer to negotiate with agent of opposing party who is a layman.

Canon: None

QUESTION

May an attorney for a claimant discuss the legal aspects of liability with a lay adjuster for the defendant's insurance company?

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OPINION

The Committee does not answer questions of law, and would not pass on the question of whether the lay adjuster is engaged in the unlawful practice of law. Assuming the employment of a lay adjuster is not illegal, we see nothing improper in an attorney for a claimant entering into negotiations with the adjuster, even where the negotiations include discussion of the legal aspects of liability. The claimant's attorney cannot be criticized for dealing with a lay adjuster who is the chosen agent of the insurance company and who also has apparent authority to act for the insured. Compare Opinions Nos. 185 (1931) and 473 (1939) of the Committee on Professional Ethics, The Association of the Bar of the City of New York.

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Opinion #5 - 11/19/64 (5-64) Topic: Minimum Fee Schedule.

Digest: Lawyer may not depart from minimum fee schedule where it is a means to solicit and advertise.

Canon: Former Canon 12

QUESTION

The President of this Association has requested a formal opinion on the question:

"Is it ethical for a lawyer habitually to perform legal services for less than the fee set forth in a duly-adopted fee schedule, and to let it be known by whatever means, that he will charge less than is provided for in such schedule?"

Canon 12:

"In fixing fees, lawyers should avoid charges which overestimate their advice and services, as well as those which undervalue them. *** In determining the amount of the fees, it is proper to consider: ***
3. The customary charges of the Bar for similar services. *** In determining the customary charges of the Bar for similar services, it is proper for a lawyer to consider a schedule of minimum fees adopted by a Bar Association, but no lawyer should permit himself to be controlled thereby or to follow it as his sole guide in determining the amount of his fee."

References:

American Bar Association Opinions:
28 (1930); 171 (1937); 190 (1939); 302 (1961)