

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

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)

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Canon 12 sets forth six factors to be considered in fixing fees, of which only one is a fee schedule adopted by a Bar Association. To use such a schedule as the sole standard, whether the fee fixed be greater or less than the schedule or exactly in accordance therewith, is, in the opinion of this Committee, improper.

Merely to depart from the fees recommended in such a schedule is not unethical where the departure results from consideration of the other factors listed in the Canon.

But to let it be known, by whatever means, that a lawyer will customarily charge for his services less than the recommended fees set forth in a duly adopted schedule is not in accordance with Canon 12 and is unethical as a form of solicitation and advertising.

Opinion #6 - 1/29/65 (6-64)

Topic: Advertising.
Announcement of Specialty.

Digest: Lawyer may send dignified announcement of his specialization to other lawyers so long as it does not constitute a statement or representation of special experience or expertness.

Canons: Former Canons, 27, 46

QUESTION

The attached letter is proposed to be circulated among members of a local Bar Association. The Ethics Committee of the local Bar Association requests an opinion as to whether the proposed letter violates Canon 27 or whether the proposed letter complies with the exception provided in Canon 46 of the Canons of Professional Ethics.

OPINION

Canon 27, which prohibits advertising directly or indirectly, seemingly includes the advertising of a specialty as well. While the Admendment thereto permits proctors in admiralty, patent attorneys and trademark attorneys to indicate their specialty on a letterhead or shingle, workmen's compensation law is not a recognized specialty.

Canon 27 must be read, however, in conjunction with Canon 46 which, as amended on February 21, 1956, states as follows:

"A lawyer available to act as an associate of other lawyers in a particular branch of the law or legal service may send to local lawyers only and publish in his local legal journal, a brief and dignified announcement of his availability to serve other lawyers in connection therewith. The announcement should be in a form which does not constitute a statement or representation of special experience or expertness."