

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

I am in a position to appear for compensation claimants at hearings before the referees and the Workmen's Compensation Board, including the preparation and arguments of applications for review, and also all proceedings and arguments before the Appellate Division and Court of Appeals, and thus, provide a needed specialized legal assistance to lawyers representing compensation claimants in X County.

Yours Very truly,

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Opinion #7 - 1/29/65 (7-64)

Topic: Advertising.
Offer of Free Legal Services in
Newspaper.

Digest: Improper for lawyer to publish
offer of free legal services for
prosecution of a particular suit.

Canons: Former Canons 27, 28

QUESTION

A series of four articles in two newspapers reported that a lawyer, practicing in the city where the newspapers were located, had offered the services of his law firm for a proposed action for reapportionment of the County Board of Supervisors.

One of the articles quoted the lawyer as saying, "Our firm will volunteer its services without cost to prosecute such an action if such were brought. It would be a matter of public service to the people of the county who are being denied representation." The article further quotes the lawyer as saying, "I think I can have such a client without much trouble. But I can't name anyone right now."

Another article reports that the lawyer seeks three plaintiffs for the proposed reapportionment suit and quotes the lawyer as saying, "One would be adequate, of course, but I thought I'd go at it this other way so these various areas could be represented."

What is the propriety of this advertising?

OPINION

In the opinion of the Committee the conduct of the lawyer is not ethical.

Canon 28 of the Canons of Professional Ethics prohibits a lawyer from encouraging litigation, except in certain instances where litigation is dictated by the interests of a client. See Opinions of the Committee on Professional Ethics of The Association of the Bar of the City of New York, Numbers 39, 64, 113, 128, 586, 717. Both the letter and spirit of Canon 28 were violated by the lawyer's offer of free legal services. It is very obvious that the lawyer had not been retained by a client to bring an action for reapportionment but was

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seeking to foment the bringing of such an action by members of the community at large.

It is felt that the lawyer also violated Canon 27 by allowing newspaper articles to be published which indirectly advertised the professional services of the lawyer and his firm. See, e.g., Matter of Connelly, 18 A.D. 2d 462 (1st Dept. 1963); American Bar Association Ethics Committee Opinion 140, unreported Opinion 79. It is recognized that the press and public have a proper and legitimate interest in newsworthy incidents in the career and activities of a lawyer. Matter of Connelly, supra, at 478. However, it is the duty of a lawyer to discourage the publication of an article he knew in advance might be construed as advertising, and he should give no aid in its preparation. Ibid. Any other conduct is derogatory to the dignity and self-respect of the profession and tends to commercialize the profession and bring it into disrepute.

The articles in question cannot be justified as the reporting of "newsworthy incidents" concerning the lawyer. The nature of the articles leaves no doubt that they were actively encouraged by the lawyer; and the lawyer allowed himself to be widely represented to the public as a public benefactor with regard to what the lawyer was quoted as calling "a matter of public service". This attempt by the lawyer to endear himself to the public of his locality constitutes, or would inevitably result in, solicitation of professional employment and is in direct contravention of Canon 27.

The opinion herein expressed does not pass on the legal question of reapportionment, it being the view of the Committee that the validity of the proposed reapportionment action was immaterial to the ethics of the conduct involved.

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Opinion #8 - 1/29/65 (8-64)

Topic: Conflict of Interest.
Minimum Fee Schedule.
Representing Mortgagor and
Mortgagee.

Digest: Under certain circumstances,
lawyer may properly charge less
than minimum fee and may
represent both buyer mortgagor and
mortgagee lending institution.

Canons: Former Canons 6, 7, 12

QUESTION

A prospective buyer of real property obtains a mortgage from a lending institution and the attorney representing the mortgagee lending institution also represented the prospective purchaser. In so representing both the lending institution and the prospective purchaser, he charged the prospective purchaser a fee less than the minimum fee prescribed by the local County Bar Association. When questioned about this, the bank attorney stated the reason he charged less than the minimum to the prospective buyer was the fact that he, as bank attorney, was receiving the minimum fee from the bank for the title examination and for representing the bank.