

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

The Committee would also point out, however, that an attorney has the obligation to refrain from endorsing a judicial candidate where it would appear that such endorsement is a "device or attempt to gain from a Judge special personal consideration or favor." (Canon 3 of the Canons of Professional Ethics.) Thus, the endorsement of a judge for reelection would be improper where the attorney has a matter pending before the judge or has a matter which has a clear present probability of being submitted to the judge in the immediate foreseeable future (See Canon 32, Canons of Judicial Ethics).

2. The Committee sees nothing improper in a judicial candidate announcing that he has the support of a specified number of former presidents of bar associations or attorneys.

3. A judicial candidate, whether a sitting judge standing for reelection to his present position or for election to another judicial post, or a lawyer campaigning for but not presently holding judicial office, may not properly solicit an attorney's endorsement of his candidacy or solicit others to do so on his behalf. As a sitting judge, such solicitation would be improper "as conduct which might tend to arouse reasonable suspicion that he is using the power or prestige of his judicial position to promote his candidacy ***" (See Canon 30 of the Canons of Judicial Ethics). Nor should one who seeks to become a judge stand in any different position (See A.B.A. Opinion 226). Each should observe the same restraint and for the same reasons. Moreover, it would be unfair and impractical to place a sitting judge under a disability in this respect and to free a practicing lawyer for the waging of a more effective campaign in this regard.

Nothing in this opinion is meant to encumber the functions or activities of duly organized local bar associations with respect to the selection and endorsement of judicial officers.

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Opinion #12 - 4/23/65 (12-64) Topic: Endorsement of Judicial and Other Candidates.

Digest: Not improper for lawyers to endorse judicial and other political candidates if endorsement is not a form of indirect advertising.

Canon: Former Canon 27

QUESTION

You have requested an opinion as to the propriety of an advertisement appearing in a daily newspaper during a political campaign signed by a number of attorneys urging the election of candidates for public office. You have also asked whether a distinction is to be made between urging the election of candidates for judicial office and candidates for other offices, such as President, U.S. Senator, etc.

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OPINION

The Committee's views with respect to the endorsement of judicial candidates by attorneys have been set forth in Opinion No. 11 - 4/23/65 (11-64). The publication of an advertisement listing such endorsements is not improper. However, each attorney listed in the advertisement has the obligation to ensure that his endorsement is not improper for reasons listed in the foregoing opinion and to ensure that the advertisement is in a form not likely to be interpreted as violating the indirect advertisement prohibition of Canon 27 of the Canons of Professional Ethics. For example the Committee would regard as improper the inclusion in the advertisement of attorneys' firm names or addresses.

The publication of an advertisement which identifies a number of attorneys urging the election of a candidate for some office other than a judicial office is not improper provided the individuals listed in the advertisement are all attorneys. In such cases the apparent purpose of the advertisement is to convey the impression that a significant number of the members of one profession support the election of a particular candidate. On the other hand, if such an advertisement lists a number of individuals endorsing a candidate only some of whom are attorneys, the identification of certain individuals as attorneys would be improper. Since the usual purpose of such advertisements is to convey the impression that leading citizens are in accord as to the virtues of particular candidates, the identification of certain of the signers as attorneys is unnecessary and constitutes indirect advertising condemned by Canon 27.

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Opinion #13 - 8/4/65 (2-65)

Topic: Advertising.
Announcement of Specialization
and Office Change.

Digest: Lawyer may announce intent to specialize in patent law, and announcement may refer to a particular public office from which lawyer is returning to private practice, but it is improper to mention prior private offices.

Canon: Former Canon 27

QUESTION

A lawyer presently holds the position of patent consultant to a patent holding company, having previously been its general patent counsel, director and executive vice-president. He plans to open his own office, specializing in the field of patents and to send out an announcement in which he would refer to his former positions with the patent holding company and to his former association with a well known patent law firm. Would such an announcement be professionally improper?