

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

the practice is not condemned by law, or is not inconsistent with local custom, or where conditions imposed by law for the continued use of the names of deceased or former partners are complied with, the Committee does not consider that the continued use of such names is professionally improper".

(See also NYSBA Opinion #2 - 11/6/64 (2-64))

Opinion #46 - 1/26/67 (5-66) Topic: Pamphlets.
Education of Lay Public and Clients.

Overruled (in part) by 540 Digest: Proper for lawyer to mail pamphlets to clients and make pamphlets available in office where name does not appear on pamphlets and purpose is to teach laymen the advantages of legal services.

Canon: Former Canon 27

QUESTION

1. Is it ethical for a lawyer to send to his clients and friends a pamphlet such as "Do you Need a Will" prepared by the New York State Bar Association?

2. Is it permissible to leave a supply of such pamphlets in his reception room?

OPINION

1. It is ethical for a lawyer to send his clients and friends a pamphlet such as "Do you Need a Will" and other pamphlets prepared by the New York State Bar Association, provided that the pamphlet in no way refers to any specific lawyer or law firm. The name of the individual lawyer or law firm may not be permitted to appear on the pamphlet. A.B.A. Informal Decision No. C768 and Informal Opinion No. 846.

Canon 27 of the Canons of Professional Ethics adopted by the New York State Bar Association forbids solicitation of business, directly or indirectly, through advertisements or other means. It is quite clear that advising the public generally of the advantages to be gained by intelligent guidance of and instruction to the public has been made an exception to Canon 27. Although these pamphlets are, in a sense, advertising, their primary purpose is to teach the layman the benefits and advantages of preventive legal services, benefiting the lay public and "because of the trouble, disappointment, controversy and litigation it will prevent, it will enhance the public esteem of the legal profession and

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create a better relation between the profession and the general public." (Drinker, page 256). See A.B.A. Informal Decision No. 631.

2. Distribution of such pamphlets by way of a rack or table in the lawyer's reception room where they are made available to lay people coming into his office is permissible so long as the lawyer's name does not appear in or on the pamphlet itself. A.B.A. Informal Opinion No. 846.

The New York State Bar Association accompanies the pamphlets with the following notice which governs their distribution:

- " 1. Pamphlets may be made available, through a distribution rack in a lawyer's office to clients and other visitors to the office.
2. Lawyers may distribute them to active, personal clients.
3. Lawyers MAY NOT make wholesale distribution of the pamphlets by mail.
4. Lawyers MAY NOT attach a business card to nor type or imprint their own name or the name of their firm on the pamphlets."

Opinion #47 - 1/26/67 (10-66) Topic: Communications with Opposing Party.

Digest: Lawyer may not communicate with opposing party without permission of opposing counsel, even where lawyer suspects violation of a canon of ethics, until case is settled.

Canon: Former Canon 9

QUESTION

A lawyer represents the plaintiff in a suit against a defendant who is defended by an insurance company. During the course of the litigation he deals not only with the defense counsel but also with the local office of the insurance company. He has reason to believe that in settlement discussions deception is being practiced on his client by the defense counsel, the local office of the insurance company or both. He asks to what extent he is prevented by the Canons of Ethics from complaining, before or after settlement of the case, to (i) the local office of the insurance company or (ii) the home office of the insurance company, when requested not to do so by the defense counsel or the local office.