

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #60 - 5/23/67 (19-67) Topic: Business Feeder for Law Practice.

Digest: Lawyer may have independent business but must observe certain ethical restrictions.

Canon: Former Canon 27, 28

QUESTION

Two attorneys propose to enter into a partnership with three non-lawyers, which will be a commercial organization rendering financial guidance and related services to professional athletes. The commercial organization will maintain physical offices separate and apart from the law office of the attorneys. No reference on the letterhead of the commercial organization will indicate any of the participants to be attorneys. The attorneys will render legal advice to the partnership but not to any of the customers of the partnership.

Does the proposed arrangement violate the Canons of Professional Ethics?

OPINION

In the opinion of this Committee, the proposed action is proper.

An attorney has the right to engage in an independent business, [Drinker, LEGAL ETHICS, pages 221-227 inclusive, and citations therein set forth] provided, among other things, he does not use his name in the name of the other business [NYSBA Opinion #26, February 9, 1966 (17-65)]; or conduct it from the same office as his legal practice [A.B.A. Op. 57]; or use the business as a device for soliciting legal employment.

It is important to bear in mind an attorney who acts in a commercial enterprise must conform to the high standards of professional conduct imposed by the Canons of Professional Ethics generally and in particular, the Canons dealing with advertising and solicitation. [N.Y.Co.Op. 380.] See also A.B.A. Informal Ops. 431, 520, 556, 645, 682 and 860.

Opinion #61 - 6/2/67 (15-67) Topic: Solicitation of Employment.

Digest: Lawyer may solicit employment as house counsel or as employee but not where relationship is to be attorney-client, unless personal relations warrant.

Canon: Former Canon 27

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QUESTION

An attorney knows that an unincorporated association is seeking a general counsel. The attorney knows several of the officers of the association on a personal basis. May the attorney express to these officers his desire to be considered for the position of general counsel?

OPINION

Canon 27 of the Canons of Professional Ethics provides in part:

"It is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications, or interviews not warranted by personal relations ..."

If the position of general counsel is that of an employee of the association, there is no impropriety in soliciting such employment, irrespective of personal relationship.

On the other hand, if the relationship is to be that of attorney-client, the propriety of seeking the position will depend upon the nature of the relationship between the attorney and the officers of the association. This relationship must be a "personal, close and intimate association". The closer the relationship, the more justification there may be for suggesting the attorney's availability.

Propriety in such cases is largely a matter of degree, good taste and good judgment under all the surrounding circumstances. (See N.Y.City Op. 467; A.B.A. Op. 106.)

Opinion #62 - 10/16/67 (17-67) Topic: Advertising.
Lawyers' Directory.

Digest: Lawyer member may not list specialties in a lawyer association membership directory.

Canon: Former Canon 27, 43, 46

QUESTION

An association of lawyers of Italian descent in a particular locality proposes to publish a directory listing the names and addresses of all members of the association together with the specialty of each member where applicable. The directory will be distributed to members of the association only. The association asks whether this practice would be proper from an ethical standpoint.