

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

(3) The distribution of the announcement to non-lawyers should be governed by the policy cited, for example, in Informal Opinion No. 618 11/23/62 of the American Bar Association's Standing Committee which indicates that notices of this nature:

"...[M]ay be sent to former clients, and to any other person with whom the personal relations of the lawyer are such as to make it clear that they would be interested in knowing of the matters covered by the notice (but not to persons with whom the lawyer had had no professional dealings or personal relations, and to whom the card would be merely a suggestion of employment)..."

As to lawyers the permissible scope of distribution is broader, and distribution to lawyers "over a wide area surrounding the Capital District", as the inquirer intends, would be proper. The New York Canon 46 does not limit the distribution of such notices to "local lawyers" as does Canon 46 of the American Bar Association. New York has adopted a more liberal view towards the distribution of announcements to lawyers on grounds that lawyers are not "...substantially influenced to employ other lawyers by announcements or impressed by their implications". See Joint Opinion of the Committee on Professional Ethics of the Association of the Bar of the City of New York (N.Y. City 686) and of the New York County Lawyers Association (N.Y. County 375) issued in 1947. The committee believes that this Joint Opinion states the New York rule that announcements may be sent to lawyers both known and unknown to the sender.

Opinion 86 - 7/16/68 (13-68)

Overruled (in part) by 331

Topic: SPECIALIZATION ANNOUNCEMENTS;
NOTICE TO ATTORNEYS

Digest: ANNOUNCEMENT OF LABOR RELATIONS LAW PRACTICE, BUT NOT REFERRING TO REPRESENTATION OF MANAGEMENT, IS PROPER.

Canons: Former Canons 27, 46

QUESTION

May a New York City firm mail an announcement to the membership of the New York State Bar Association reciting that the firm is "Specializing In The Representation of Management In LABOR RELATIONS LAW"?

OPINION

It is well recognized that the sending of announcements by lawyers to persons with whom they have "personal relations", advising of the opening or removal of their offices, the admission of new partners or similar news concerning themselves, does not constitute advertising or the solicitation of professional employment in violation of Canon 27. There has, however, been a difference of opinion among the Committees of the various Bar Associations with respect both to the permissible content of professional announcements and the persons to whom the

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

(1) The proper method for designating himself as a patent attorney on the letterhead of his law firm, no other member of such firm being a patent attorney.

(2) Whether it would be proper for the firm to print in one professional announcement, the inquirer's association with the law firm, his admission to the Patent Bar, and a change in location of the firm's offices.

(3) The proper scope of distribution of the above announcement.

OPINION

(1) Canon 27 of the American Bar Association, which is relevant here, prohibits every form of solicitation including indirect advertising for employment. As amended in 1951, the Canon provides:

"It is not improper for a lawyer...who has complied with the statutory requirements of admission to practice before the Patent Office to so use the designation 'patent attorney', or 'patent lawyer', or 'trademark attorney', or 'trademark lawyer', or any combination of those terms.

While New York has not incorporated the above amendment in its Canons, this Committee heretofore rendered opinions as if the above amendment had been adopted (see N.Y.State 21, 24 and 49). Therefore, we deem the issue to be not whether, but how this specialty designation should appear on the letterhead.

The designation of this specialty should appear so as to indicate that the inquirer alone is the holder of the specialty. This would be accomplished by placing the term "Patent Lawyer" or the allowed equivalent (see Canon 27) next to the inquirer's name where it appears on the letterhead. This in effect was required in Informal Decision #571(b), 8/23/62 of the American Bar Association's Standing Committee on Professional Ethics, in which the following letterhead was determined to be "misleading and therefore unethical":

A&B
Attorneys and Counselors at Law
Patent Lawyer

where only B was a patent lawyer. This opinion stated that the substitution of the phrase "B, Patent Lawyer" would cure the defect.

(2) There is nothing improper about the professional announcement contemplated which would include in one notice the inquirer's association with the law firm, his admission to the Patent Bar, and a change in location of the firm's offices. Of course the announcement should be simply and decorously stated.

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

announcements may be mailed. For years, the American Bar Association condemned the mailing of announcements specifying the branches of the law which a lawyer practiced, (other than recognized specialties such as admiralty, patents, trademarks and copyrights) except only in the special case permitted by Canon 46. Until 1956, Canon 46 of both the American Bar Association and the New York State Bar Association read as follows:

"46. Notice of Specialized Legal Service

"Where a lawyer is engaged in rendering a specialized legal service directly and only to other lawyers, a brief, dignified notice of that fact, couched in language indicating that it is addressed to lawyers, inserted in legal periodicals and like publications when it will afford convenient and beneficial information to lawyers desiring to obtain such service, is not improper."

Although Canon 46 was strictly construed by the American Bar Association Committee on Professional Ethics (see ABA 251 and opinions cited), the New York associations adopted a more liberal view. In a Joint Opinion of the Committees on Professional Ethics of the Association of the Bar of the City of New York (N.Y.City 686) and of the New York County Lawyers Association (N.Y.County 375) issued in 1947, it was said:

"After full reconsideration by the Committees, they are of the opinion that a distinction should be made between announcements to be sent only to lawyers, and announcements to be sent to others. Announcements made to lawyers only, which state the particular branch of law intended to be practiced, are still predominantly informational in character because lawyers are not substantially influenced to employ other lawyers by announcements or impressed by their implications. On the contrary, such announcements have a far greater tendency to impress persons other than lawyers with the obvious implication that the announcer is particularly qualified to handle the type of matter to be specialized in; and hence such announcements constitute improper solicitations of employment when sent to others than lawyers."

In 1956 the American Bar Association amended its Canon 46 to read as follows (The New York State Bar Association Canon 46 remains unchanged):

"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."

The present American Bar Association Canon 46 and the New York State Bar Association Canon 46 as interpreted by the New York Joint Opinion quoted above, seem to us to express the same rule.

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

It is also our opinion that labor law is a particular branch of the law and that accordingly an announcement sent to lawyers only that a firm is engaged in the practice of Labor Relations Law is not improper. (ABA Inf. 876)

Inasmuch as "Labor Law" encompasses questions concerning both labor and management, the employment of the words "the Representation of Management" is disapproved. (ABA Inf. C-763)

The American Bar Association Canon 46 permits the announcement to be sent "to local lawyers only" and indeed is entitled "Notice to Local Lawyers" but the New York State Bar Association Canon 46 does not so provide. In the view of this Committee, the more liberal Joint Opinion quoted above states the rule in this State and announcements may be sent to lawyers "both known and unknown" to the sender. This would include the members of the New York State Bar Association.

Opinion 87 - 7/16/68 (15-68)

Topic: FEES
Digest: INTEREST CHARGES ON DELIN-
QUENT ACCOUNTS

Overruled (in part) by 399

Canons: Former Canons 12, 14

QUESTION

May an attorney charge interest on a delinquent account?

OPINION

Canon 14 of the American Bar Canons of Ethics states "controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and with his rights to receive reasonable compensation for his services, and lawsuits with clients should be resorted to only to prevent injustice, imposition or fraud". It has been held in prior opinions that the charging of interest is improper. The effect of such charges would appear to be an inducement to pay promptly and the effect of this is not dissimilar to offering a discount for prompt payment of attorney's fees, which practice was specifically disapproved also in prior opinions. Mere carelessness on the part of a client in the prompt payment of a fee should not be a basis for the charging of interest.

If, however, it appears that the client is willfully delinquent in making payments on fees for services rendered, it is the opinion of this Committee that an attorney might reasonably press for payment of this fee using such methods as might be reasonable under the circumstances to collect the balance of the fees involved. This reasonableness might include the bringing of a suit to recover the same in which event the inclusion of interest and costs could properly be included in the recovery. If the client is financially pressed, then the attorney should use good judgment, having in mind that the profession of law is not a mere money-making trade. So far as the attorney's course of action is concerned in this respect, what methods are necessary and appropriate, and what interest rate might be charged, should be a matter of the attorney's sense of decency and propriety.