

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

To permit this activity would give the impression to the public that the Judiciary and law enforcement agencies are not totally separate and impartial departments. This in turn might give rise to the conclusions that a defendant would not secure a fair and completely objective trial and lessen respect for the judicial system.

Opinion #168 - 11/6/70 (48-70) Topic: Confidential Communications.

Digest: Obligation of lawyer of executor-client misappropriating estate assets depends on whether restitution is made.

Code*: Canon 4
EC 4-1, 4-2, 4-4
DR 4-101(B) and (C),
DR 7-102 (B) (1).

QUESTION

A lawyer is retained by an executor for an estate to handle the legal work involved in administering the estate. While preparing the accounting to be filed with the surrogate's court, the lawyer discovers an apparent misappropriation of funds belonging to the estate. In response to questions from the lawyer, the executor admits the misappropriation. The lawyer advises the executor that he must reimburse the estate. The executor agrees to do so and makes full restitution before filing his accounting with the surrogate's court. Now that restitution has been made, is the lawyer under any obligation to inform the surrogate of the executor's wrongdoing?

OPINION

Once full restitution has been made, the obligation to preserve the confidences and secrets of the client, imposed by Canon 4, EC 4-1 and 4-4, and DR 4-101(B), precludes the lawyer from revealing the executor's wrongdoing. A lawyer may properly disclose confidences and secrets of a client only under the mandate of a specific disciplinary rule, such as DR 7-102(B) (1) [refusal to rectify a fraud], or in the circumstances specified in EC 4-2 [consent of client or required by law], and DR 4-101(C) [intention to commit a crime].

Opinion #169 - 11/6/70 (49-70) Topic: Directories;
Advertising.

Digest: Proposed publication and distribution would be proper if certified by the American Bar Association and specialties are omitted.

Code*: EC 2-9, EC 2-10, EC 2-14
DR 2-101(A); DR 2-102(A) (6),
DR 2-103(A), DR 2-105.

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QUESTION

May a roster of members of an organization composed of judges and court personnel, all of whom are attorneys, which will be distributed only to members of such an organization for their sole use, indicate the specializations of each member?

OPINION

It is the opinion of the Committee that the proposed publication and distribution would be proper only if it omitted reference to the specialities of the members.

"Reputable law lists" may include the lawyer's name, address, biography and "branches of his profession practiced". The American Bar Association certified law lists which its Special Committee on Law Lists believes to be "reputable". The membership directory of the association in question is not a law list.

DR 2-105 (A) (2) allows for publication of brief dignified notice of the fields of law in which an attorney will accept referrals.

New York State has no provision for certification of a lawyer as a specialist in a particular field of law as provided for in DR 2-105(A) (4). EC 2-14 of the Code provides as follows:

"In some instances a lawyer confines his practice to a particular field of law. In the absence of state controls to insure the existence of special competence, a lawyer should not be permitted to hold himself out as a specialist or as having special training or ability, other than in the historically excepted fields of admiralty, trademark, and patent law."

The membership directory in this case is not a legal periodical or a publication which may list areas of referrals.

See N.Y. State 62 (1967).

Opinion #170 - 11/6/70 (51-70)

Topic: Advertising;
Professional Card.

Digest: May employee of Search
Organization identify self on
professional card as attorney.

Code*: DR 2-102 (E), DR 2-102 (F).

QUESTION

May a full time employee of a professional search organization dealing primarily with the placement of lawyers use on his business card characteristics such as, attorney at law or esquire, identifying his legal training and qualification.