

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

OPINION

Such conduct would be improper. A lawyer who assumes representation of a client in a civil or criminal case may withdraw only on the basis of compelling circumstances. EC 2-32. When a matter is pending before a tribunal the proper procedure is for the lawyer to request the Court's permission to withdraw. N.Y. State 178 (1971). Such permission may properly be requested when a client "deliberately disregards an agreement or obligation to the lawyer as to expenses or fees." DR 2-110 (C)(1)(f). Where there is no agreement as to the amount of compensation or the time for the payment, it cannot be said that the client "deliberately disregards an agreement or obligation" In any case where withdrawal is permitted the lawyer should comply with the requirements of DR 2-110 (A)(2), which provides that:

"(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules."

Opinion #188 - 4/28/71 (14-71)

Topic: Solicitation of Clients.

Digest: Calling attention of clients to the passage of time since execution of Wills and possible need of redraft is not improper.

Code*: DR 2-104 (A)(1)
EC 2-1; 2-3; 2-4.

QUESTION

May an attorney notify each client for whom he has drawn a will that the will is five years old and recommend that it be reviewed?

OPINION

This Committee concurs with ABA 210 (1941) which states in part:

"Many events transpire between the date of making the will and the death of the testator. The legal significance of such occurrences are often of serious consequence, of which the testator may not be aware, and so the importance of calling the attention of the testator thereto is manifest.

"It is our opinion that where the lawyer has no reason to believe that he has been supplanted by another lawyer, it is not only his right, but it might even be his duty to advise his client of any change of fact or law which might defeat the client's testamentary purpose as expressed in the will.

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"Periodic notices might be sent to the client for whom a lawyer has drawn a will, suggesting that it might be wise for the client to reexamine his will to determine whether or not there has been any change in his situation requiring a modification of his will."

An attorney may call the attention of his clients to factors which inure to their benefit in relation to matters regarding which he has been consulted, and the attorney may, in fact, have a duty to do so. EC 2-1, 3 and 4; DR 2-104(A)(1); cf. ABA 213 (1941).

There is no ethical objection to the will review program proposed.

Opinion #189 - 5/27/71 (16-71)

Topic: Attorney as Member of
First Aid Squad.

Digest: Attorney may represent party
to accident which he serves
as member of first aid squad
if he acts with propriety.

Code*: Canon 9

QUESTION

An attorney has been asked to join a volunteer first aid squad equipped with an ambulance. May he so serve and may he thereafter represent a party to an accident concerning which his squad responded to a call?

OPINION

The legal profession is part of the administration of justice, which depends on the public respecting and trusting lawyers and lawyers respecting and trusting each other. A lawyer owes a duty to the bar to maintain the dignity and standards of his profession which bring prestige and public respect to its members. Canon 9 says "a lawyer should avoid even the appearance of professional impropriety."

Participation by a lawyer in a volunteer ambulance service is in the highest traditions of community service, and there is nothing inherently wrong in thereafter representing a party to an accident for which he has rendered such service if he has done nothing to solicit the case.

Unfortunately, for many years the public image of the unethical lawyer, the lawyer without dignity or pride in his profession, has been the "ambulance chaser". If a lawyer represents persons involved in accidents to which he rode the ambulance, there is substantial danger of suspicion on the part of the public and fellow lawyers alike that he used the ambulance service to that end.

In each such case it should be left up to the attorney to act with special caution, conscious of the foregoing considerations. When acting as a member of the first aid squad he should not disclose to persons served the fact that he is a lawyer, and doubts should be resolved against representation.