

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

QUESTION

Would it be proper for a lawyer to mail to other lawyers, whose clients may be involved in collective bargaining negotiations, a dignified personal letter stating that he is an attorney specializing in labor relations law and announcing that his services are available "of counsel" to render advice in the field of collective bargaining?

OPINION

DR 2-105(A)(3) provides:

"A lawyer available to act as a consultant to or as an associate of other lawyers in a particular branch of law or legal service may distribute to other lawyers and publish in legal journals a dignified announcement of such availability, but the announcement shall not contain a representation of special competence or experience. The announcement shall not be distributed to lawyers more frequently than once in a calendar year, but it may be published periodically in legal journals".

Accordingly, the suggested letter may be used within the proper limits as specified in the disciplinary rule. Cf. N.Y. State 195 (1971).

Opinion #216 - 12/20/71 (50-71)

Topic: Newspaper Advertisements
Seeking Funds for Clients

Digest: An attorney may not advertise his name for money to be invested by clients.

Code*: DR 2-101(B);
Canon 1, 9

QUESTION

May an attorney place an advertisement in a newspaper for venture capital for clients requesting that inquiries be directed to the attorney identifying the attorney individually or as an attorney?

OPINION

An attorney may not advertise his name for money to be invested by his clients. N.Y. City 414 (1937). Any business thus secured would necessarily inure to the lawyer's benefit. There is no reason why the lawyer should do the advertising. It is not a lawyer's function to promote a client's business.

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A lawyer shall not publicize himself nor shall he authorize others to do so on his behalf. DR 2-101(B). See, N.Y. State 201 (1971); N.Y. State 213 (1971). A lawyer should assist in maintaining the integrity and competence of the legal profession. Canon 1. A lawyer should avoid even the appearance of professional impropriety. Canon 9.

Opinion #217 - 12/20/71 (45-71)

Topic: Prosecuting Attorney:
Political Activity.

Digest: Prosecuting attorney
may not be member of
county committee of
political party.

Code*: Canon 9;
EC 7-13; 8-8; 9-6

Canons of
Judicial Ethics: Canon 28

QUESTION

May an attorney who is a District Attorney be a member of a County Committee of a political party?

OPINION

Apart from any restrictions imposed by law, we are of the opinion that it would not be proper for a prosecuting attorney to be a member of a County Committee of a political party. See Public Officer's Law Sec. 73(8); Election Law Secs. 181, 426; 18 USC Sec. 595. The duties and responsibilities of a prosecuting attorney are unique and differ greatly from those of a lawyer engaged in private practice. His position is not only that of advocate but of administrator of impartial justice. As stated in ABA 150 (1936), "it is his primary duty not to convict but to see that justice is done."

EC 7-13 provides that:

"The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict. This special duty exists because: (1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute; (2) during trial the prosecutor is not only an advocate but he also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all; and (3) in our system of criminal justice the accused is to be given the benefit of all reasonable doubts. With respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice: the prosecutor should make timely disclosure to the defense of available evidence, known to him, that tends to negate the guilt of the