



Committee on Professional Ethics

Opinion #441 - 8/11/76 (27-76) Topic: Schedule of fees.

Digest: Lawyer may give truthful and dignified fee schedule brochure to those visiting his office as clients or prospective clients.

Code: EC 2-1, 2-17, 2-19
DR 2-101, 2-102, 2-102(A),
2-103, 2-103(A), 2-104.

QUESTION

May a lawyer make available to those who visit his office as clients or prospective clients a brochure schedule of legal fees, bearing his firm name and address?

OPINION

A lawyer may properly make available to his clients, and to those who visit his office as prospective clients, a truthful and dignified brochure setting forth the basis of his fee charges, and listing specific fees that he will charge for particular types of service. Such a brochure could well "prevent later misunderstanding" and "work for good relations between lawyer and client", within the meaning of EC 2-19, which provides:

"As soon as feasible after a lawyer has been employed, it is desirable that he reach a clear agreement with his client as to the basis of the fee charges to be made. Such a course will not only prevent later misunderstanding but will also work for good relations between the lawyer and the client. It is usually beneficial to reduce to writing the understanding of the parties regarding the fee, particularly when it is contingent. A lawyer should be mindful that many persons who desire to employ him may have had little or no experience with fee charges of lawyers, and for this reason he should explain fully to such persons the reasons for the particular fee arrangement he proposes."

Certainly clients and prospective clients, especially those of moderate means, have a legitimate interest in knowing what legal service will cost. EC 2-17. EC 2-19 calls for "clear agreement[s]... as to the basis of the fee charges". This provision also expressly recognizes that it "is usually beneficial to reduce [fee agreements] to writing". Making appropriate fee information easily available also "facilitate[s] the process of intelligent selection of lawyers", as encouraged by EC 2-1.

Prior to the United States Supreme Court's decision in Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975), bar association codes typically supported the use of schedules of "suggested" or "customary" or "minimum" fees. When such schedules were believed to be valid,

many lawyers serving clients of moderate means would regularly agree to provide such clients with many typical types of legal service at "the Bar Association minimum". Goldfarb only held the use of such a schedule was improper when its rates were the product of concerted action operating to prevent price competition. There is no impropriety in an individual lawyer providing those who come to his office as clients or prospective clients with an honest and dignified brochure of his own rates for services of various types, provided his rates are not the product of an agreement with competitors.

We fully recognize that the Code as presently drafted forbids the use by lawyers of commercial and certain other means of publicizing themselves and their fee policies. DR 2-101; DR 2-102; DR 2-103; and DR 2-104. But to interpret the Code as forbidding the use of a truthful and dignified fee schedule brochure within the lawyer's own office would be an unjustified expansion of DR 2-103(A) which prohibits the lawyer from recommending his own employment only to "a non-lawyer who has not sought his advice regarding employment of a lawyer". Where a lawyer is willing to abide by a fee schedule which is not the product of an anticompetitive agreement, he should be free to use reasonable means to disclose this information to those who come to his office in search of legal assistance.

It would be unrealistic to limit the use of written fee schedules to the situation where the client first requests one. Many clients are hesitant to ask about fees. Few are likely to know that such a schedule may be available. Thus the lawyer may himself provide the client with the brochure, or have his secretary do so when the client or prospective client comes to his office seeking his service. It would, however, be improper to provide a stack of fee brochures in a lawyer's waiting room for unrestricted distribution to any of the general public who may visit the office for a purpose other than seeking legal assistance. Such distribution would be contrary to DR 2-102(A), which sets forth the professional notices that a lawyer may properly use. The accessibility of the brochures to such non-clients would change their role from a device used to provide appropriate fee information to those seeking the lawyer's service to an advertising device not recognized under DR 2-102(A).

This Committee has previously recognized that a group legal service plan may use a written fee schedule and circulate it to plan members. See N.Y. State 417 (1975); N.Y. State 428 (1976). Lawyers who do not participate in group legal service plans should have an equal opportunity to provide similar fee schedules to those who seek their services. Clients and prospective clients who come to individual lawyers should have an equal opportunity to get such information as those who get legal service through group plans.

Any fee schedule brochure made available to clients or prospective clients wishing to discuss a possible retainer would have to meet the same standards mandated by N.Y. State 428 (1976) for group legal service fee brochures. Such a "brochure is dignified, the material

[in it] does not contain any untrue statement of a material fact and does not omit to state [any] material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading". Such schedules should be prepared for the purpose of promoting an informed interchange between lawyer and client or potential client concerning fees. The lawyer should also be prepared to answer fully any questions respecting fees which may be raised at the initial interview.
