

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

It is not improper for an attorney returning to private practice from a government position, to state in his professional announcement the particular public office from which he is returning. "Such a statement should not go beyond naming the department or agency of the Government with which the attorney served and the title of the position which he held therein. The terms of the announcement and its physical setup should be such as to avoid any implication that the attorney is seeking to announce that he is specially qualified to handle matters dealt with by such agency or department or in which he gained experience while holding public office." (Joint Opinion No. 375 of New York County Lawyers' Association and The Association of the Bar of the City of New York.)

A notice which states or implies a particular field of specialization, other than patents, trademark and admiralty law, is not permitted to be sent to laymen because it constitutes improper advertising or solicitation. Since the partnership in this case will not, as such, engage in practice in any other field, it would be improper not to mention the field of specialization, because to omit it would cause the announcement to imply that the lawyers are partners for other fields as well. This would be a misrepresentation. See Opinion No. 15 of this Association, published in the New York State Bar Journal of August, 1966, page 381.

Opinion #37 - 11/30/66 (8-66)

Topic: Champerty.

Assumption of Responsibility for
Litigation Expenses.

*Modified by #37(a).

Digest: Lawyer's assumption of personal
responsibility for client's
medical expenses would be improper.

Canon: Former Canons 10, 42

QUESTION

An Attorney reports that doctors in the area in which he is practicing, have taken the position that an attorney representing a claimant in a negligence case must assume personal responsibility for the physician's fee for issuing a medical report concerning the injuries sustained, the physician's fee for examination of the claimant prior to testifying, and his fee for a conference with the lawyer concerning the testimony the doctor will give at the trial. Also, they require the attorney to be personally responsible for, and to pay for the doctor's testimony (attendance) at the trial itself.

Query: Is it ethically proper for an attorney to assume personal responsibility for such charges which in some cases are stated to amount to several hundreds of dollars

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OPINION

It is the opinion of this committee that it would not be ethically proper for an attorney to assume personal responsibility for physician's fees in the circumstances above set forth. It would violate Canons 10 and 42 and would be champertous, (Matter of Gilman, 251 N.Y. 265, 269).

A physician may attempt to assure payment of his fees out of a recovery in a negligence action by obtaining a valid assignment of their value from his patient. Of course, a lawyer with notice of an assignment executed by his client to a doctor is personally liable if he fails to honor the assignment out of any recovery, (Brinkman v. Moskowitz, 38 Misc. 2d, 950).

The instances propounded by the question are specifically covered in the "Standards of Practice for Doctors and Lawyers" adopted by the New York State Bar Association and the Medical Society of the State of New York, under the chapter entitled "Compensation", paragraph "G".

"The payment of a physician's fees for examinations, reports, conferences, and testimony in connection with litigation is always the obligation of the patient or the party to a court action. It is contrary to the Canons of Ethics of the legal profession for a lawyer to agree to be personally responsible for the costs of maintaining a lawsuit. It is often advantageous to request the patient, either directly or through his lawyer, to permit the lawyer to pay the physician's fee directly out of any recovery which may be had in a particular lawsuit. The lawyer, where he requests reports, conferences, or testimony, may advance the payment for these charges as necessary, reimbursable expenses. If the lawyer does not advance the payment, he should use his good offices to see that the charges are paid by his client."

These standards of practice are guidelines for both professions and are the result of years of study and consideration in order to reach mutual understanding and respect between the two professions in carrying out their respective responsibilities to their patients and clients.

Opinion #37(a) - 3/1/68 (31-67) Topic: Champerty.
Assumption of Responsibility for
Litigation Expenses.

Modified by #37

Digest: Lawyer's assumption of personal responsibility for client's expenses for experts in the preparation of litigation is not improper provided client is to reimburse lawyer.

Canon: Former Canons 10, 28, 42