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Opinions of the Ethics Committee of the Colorado Bar Association

Dicta Editorial Board

OPINIONS OF THE ETHICS COMMITTEE OF THE COLORADO BAR ASSOCIATION

OPINION NO. 3
APRIL 11, 1959

1. A lawyer may, with propriety, write articles for publications in which he gives general information upon the law.
2. A lawyer writing articles on legal subjects for magazines, newspapers, trade journals, and the like may sign his name to such articles, but the words "Attorney at Law," "Lawyer," or other similar designation should not be used therein.
3. A lawyer writing articles for publications may not accept employment from such publications to advise specific inquirers with respect to their individual rights.
4. A lawyer writing articles for publications may not, in such articles, give specific legal advice on specific fact situations presented by inquirers to such publications.
5. A lawyer writing articles for publications should caution and advise the readers thereof that their individual attorneys should be consulted as to specific questions raised by the general information on the law presented in such articles.
6. A lawyer writing articles for *legal* periodicals may sign his name to such articles, may have the designation "Lawyer" or "Attorney at Law" appear in connection therewith and may furnish brief biographical data which may be of interest to other lawyers and helpful in appraising the writer's competence and may have his photograph published in connection therewith.

FACTS

A trade association requests an attorney to write a monthly column in the association's magazine concerning various legal problems which may confront the members of that association.

OPINION

Canon 40 of the Canons of Professional Ethics, as adopted by the Colorado Supreme Court, reads as follows:

> A lawyer may, with propriety, write articles for publications in which he gives information upon the law; but he should not accept employment from such publications to advise inquirers with respect to their individual rights.

This canon, in its exact language, was adopted by the American Bar Association in 1928. Prior to that time such activity had been held to be improper advertising under Canon 27 and conducive to diminishing the lawyer's personal contact and responsibility to in-

dividual clients. See Opinion No. 203 of the New York County Lawyers Association.

Canon 40 now permits such activity if certain safeguards are observed. Borderline cases concerning the application of Canon 40 will involve the question of the lawyer's good faith and the publisher's or sponsor's good faith.

The Committee is of the opinion that a lawyer writing articles on legal subjects for magazines, newspapers, trade journals, and the like may, with propriety, sign his name to such articles, but should not use the words "Attorney at Law," "Lawyer," or other similar designation in connection therewith. The reason for this seems fairly obvious. Such designation might well involve the indirect solicitation of professional employment proscribed by Canon 27.

Moreover, a lawyer writing such articles for publications may not, in such articles, give specific legal advice on specific fact situations presented by inquirers to such publications. The giving of such advice to persons with whom the lawyer had no personal contact or background of the kind so necessary to make legal advice reliable would violate Canon 35, which states that a lawyer's responsibilities and qualifications are individual. A lawyer's relation to his client should be personal.

To assure this necessary personal lawyer-client relationship, the lawyer writing such articles in lay publications should caution and advise the readers thereof to consult their individual attorneys as to specific legal questions raised by his general discussion of the law in said articles. The American Bar Association Committee on Professional Ethics and Grievances has written a number of opinions pointing out the pitfalls involved in the application of Canon 40. See, for instance, Opinions 92, 98, 121, 162, 270 and 273.

One aspect of the problem before us not previously mentioned in this opinion is discussed in Opinion 273 of the A.B.A. Committee. That opinion involved the ethical propriety of the action of certain lawyers in rendering opinions to a manufacturers' association for inclusion in bulletins issued to its members.

The Committee discussed the implications in Canon 35, as we have done above, and, in addition, felt that Canon 47 was in point on this fact situation. Canon 47 is as follows:

> No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate.

The Committee did not pass directly on the question as to whether the given practice constituted an unauthorized practice of law. Feeling that such question was properly one for the A.B.A. Committee on the Unauthorized Practice of Law, one of the bulletins involved was submitted to that body for opinion. Its opinion, dated September 27, 1946, held that the issuance of that particular bulletin *did* constitute an unauthorized practice of the law on the

part of the manufacturers' association. As a result, the A.B.A. Committee on Professional Ethics and Grievances, in Opinion 273, held that the lawyers who furnished the opinion contained in the bulletin aided and made possible the unauthorized practice of law by a lay agency, in violation of Canon 47.

Drinker on Legal Ethics (Columbia University Press, 1953) files an interesting *caveat* to the propriety of a lawyer writing articles for publications in which he gives information on the law. At p. 264 of his treatise, he states:

> It is believed that Canon 40 was designed primarily to sanction articles in law magazines or occasional articles in other publications and that it would be difficult, if not impossible, to conceive of a daily, weekly, or monthly column in a newspaper or magazine devoted to the discussion of legal matters which would not, sooner or later, violate Canon 40 and, also, Canons 27, 35, and 47. What the readers of such columns want is not a general discussion such as they can find in a law book or in an article in a law magazine, but something practical which they can apply to their own personal experience. Laymen usually are unable to formulate questions clearly to such a column and a lawyer answering such is apt to follow what he thinks his readers want to hear about and to answer the personal problem which he sees behind their questions. This is what the publishers will ultimately see that they get.

A lawyer writing such articles must see that he does not fall into such pitfalls so eloquently described by Mr. Drinker.

Finally, this Committee sees no impropriety in a lawyer writing an article, comment, case note, or book review for publication in a recognized legal periodical. Of course, his name may, and should, be signed to such articles, and the designation "Lawyer" or "Attorney at Law" may be used. His photograph may also be published. Some legal periodicals give brief biographical data on such a lawyer indicating his experience and expertness in the field which forms the subject of the article. This is likewise permissible because the publication is intended for judges, lawyers, and law students, who are fully capable of judging the intrinsic value of the article. Moreover, no overtone of solicitations of professional services could be present in this situation.

OPINION NO. 4

APRIL 11, 1959

1. An announcement card designating or implying a specialty may be mailed only to local lawyers and not to any other persons. It should be brief and dignified and should not contain self-laudatory statements.

2. An announcement card designating or implying a specialty, even though mailed only to local lawyers and not to any other persons, is improper if it is in a form which constitutes a statement or representation of special experience or expertness.

FACTS

A law firm sends the following announcement card in the mail:

Doe and Moe
Attorneys at Law
Address
Announcing the Formation
of a Partnership
for the General Practice of Law
Specializing in Practice before the
Securities and Exchange Commission
and other Governmental Agencies
Phone Number John Doe
Date Joe Moe

OPINION

Canon 27 states, in part, that "It is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations."

Canon 46 as amended by the American Bar Association on February 21, 1956, states in full:

> A lawyer available to act as an associate of other lawyers in a particular branch of the law or legal service may send to local lawyers only and publish in his local legal journal a brief and dignified announcement of his availability to serve other lawyers in connection therewith. The announcement should be in a form which does not constitute a statement or representation of special experience or expertness.

Prior to its amendment, and at the time of its adoption by the Colorado Supreme Court in 1953, Canon 46 read as follows:

> "Where a lawyer is engaged in rendering a specialized legal service directly and only to other lawyers, a brief, dignified notice of that fact, couched in language indicating that it is addressed to lawyers, inserted in legal periodicals and like publications, when it will afford convenient and beneficial information to lawyers desiring to obtain such service, is not improper."

The conclusions reached in this Opinion and in Opinions No. 5 and No. 6 would be the same under Canon 46 prior to amendment.

If the card were mailed to persons (including clients) other than local lawyers, it would violate Canon 27 as the advertising of a specialty. The Committee on Professional Ethics and Grievances of

the American Bar Association has held in numerous opinions that an announcement or card may not designate or imply a specialty (except patent law and admiralty law), since such would constitute indirect advertising in violation of Canon 27. See Opinions 36, 114, 145, 175, and 251 of the ABA Committee.

Canon 46 is an exception to Canon 27 but is to be strictly construed. See ABA Opinion 145. The card is apparently not addressed only to other lawyers, let alone only to "local lawyers," since it makes no reference to availability to associate with other lawyers in cases within the designated specialty, and, furthermore, it refers to "general practice" as well as the specialty. Nevertheless, if the card were mailed only to local lawyers, it is difficult to see how such could constitute advertising and, therefore, be in violation of Canon 27. The card is not self-laudatory and makes no reference to any "special experience or expertness."

The Committee is of the opinion that the announcement card referred to is proper if mailed only to local lawyers but, if not so restricted, it is in violation of Canon 27.

OPINION NO. 5

APRIL 11, 1959

1. An announcement card designating or implying a specialty may be mailed only to local lawyers and not to any other persons. It should be brief and dignified and should not contain self-laudatory statements.
2. An announcement card designating or implying a specialty, even though mailed only to local lawyers and not to any other persons, is improper if it is in a form which constitutes a statement or representation of special experience or expertness.

FACTS

A lawyer sends the following announcement card in the mail:

John Doe
Former attorney for the
Colorado Public Utilities Commission
Announces
The Opening of Offices for
the General Practice of Law
Address
Telephone Number
Specializing in Motor
Carrier and Utility Law Date

OPINION

For the same reasons stated in Opinion No. 4, the Committee is

of the opinion that this card violates Canon 27, unless mailed only to local lawyers and not to clients or other persons.

The card is substantially similar to the one referred to in Opinion No. 4, with the added element of designation of a former government position, that is, "former attorney for the Colorado Public Utilities Commission." If the card were mailed to persons other than local lawyers, this added element would be a further reason why so doing would be unethical. See ABA Opinion 264. But, once again, the Committee feels that, if restricted to local lawyers, the card would not be improper. Obviously though, as was the case in Opinion No. 4, the wording of the card indicates that it was probably mailed to other persons.

OPINION NO. 6
APRIL 11, 1959

1. A card announcing the formation of a partnership between lawyers residing in different states is proper if it designates in which state or states the respective lawyers are licensed to practice and if a true partnership exists between the lawyers.

FACTS

A law firm sends the following announcement card in the mail:

A, B, and C
Attorneys at Law
Washington, D. C.

Are Pleased to Announce that
John Doe
Has Joined the Firm as a Resident Partner in
————————, Colorado, with Richard Roe.
They will conduct their Practice as
Doe and Roe
Date Address Phone Number

OPINION

Canon 33 reads as follows:

Partnerships among lawyers for the practice of their profession are very common and are not to be condemned. In the formation of partnerships and the use of partnership names care should be taken not to violate any law, custom, or rule of court locally applicable. Where partnerships are formed between lawyers who are not all admitted to practice in the courts of the state, care should be taken to avoid any misleading name or representation which would create a false impression as to the professional position or privileges of the member not locally admitted. In the formation of partnerships for the practice of law, no person should be admitted or held out as a practitioner or member who is not a member of the legal profession duly author-

ized to practice, and amenable to professional discipline. In the selection and use of a firm name, no false, misleading, assumed or trade name should be used. The continued use of the name of a deceased or former partner, when permissible by local custom, is not unethical, but care should be taken that no imposition or deception is practiced through this use. When a member of the firm, on becoming a judge, is precluded from practicing law, his name should not be continued in the firm name.

Partnerships between lawyers and members of other professions or non-professional persons should not be formed or permitted where any part of the partnership's employment consists of the practice of law.

ABA Opinion 256 indicates such a card is proper, but the card should state which of the lawyers are licensed to practice in Washington, D. C., only, and which are licensed in Colorado only.

Also, Canon 33 requires that, where lawyers hold themselves out as partners, a genuine partnership must exist, not merely an association as to particular cases. See ABA Opinion 277. It is assumed that the lawyers referred to in the above card are true partners.

OPINION NO. 7
APRIL 11, 1959

1. A lawyer who owns an interest in a collection agency and participates in its management may not conduct a law practice in the same offices as the collection agency.
2. A lawyer who owns an interest in a collection agency and handles its claims in court may not conduct a law practice in the same offices as the collection agency.

FACTS

A lawyer has a financial interest in a corporation operating as a collection agency. He maintains a general law practice in the same offices as the corporation, which are located on the ground floor at the corner of a busy intersection in a large city. On the store-front windows appears the name "X Collection Agency," and underneath appears "John Doe, Attorney at Law." The corporation solicits business by various types of advertising and personal contact, taking delinquent accounts by assignment and endeavoring to collect them on a contingent-fee basis. Mr. Doe manages the collection business on behalf of the corporation. The corporation sends out collection letters on the attorney's letterhead. If it becomes necessary to sue on an account, Mr. Doe acts as attorney for the corporation, files the action, and represents the corporation in court.

OPINION

In the opinion of the Committee, Mr. Doe is in violation of the Canons of Professional Ethics.

Opinion 225 of the Committee on Professional Ethics of the American Bar Association is directly in point. There the question before the Committee was in three parts: first, where the lawyer participated in the management of the collection agency, but an outside lawyer was employed to handle claims in court; second, where the lawyer did not participate in the management, but did handle the claims in court; and third, where the lawyer did neither of these things, but did own an interest in the collection agency.

The ABA Committee was of the opinion that there was nothing improper about a lawyer's owning an interest in a collection agency, as in any other business, provided "the name of the lawyer is neither included in the name of the agency, placed on its stationery, nor included in its advertisements, and nothing is done to create the impression that the agency enjoys the benefit of the lawyer's advice and professional responsibility." But the ABA Committee held that in either of the first two instances, that is, where a practicing lawyer owns an interest in a collection agency and also participates in its management or handles its claims in court, the lawyer's conduct is unethical. The ABA Committee based its opinion on Canon 27, which prohibits solicitation of professional employment, but intimated that Canon 35 and Canon 47 might also be involved.

Your committee agrees with the ABA Committee and holds that the conduct of Mr. Doe violates Canon 27. The collection agency would inevitably operate as a feeder for Mr. Doe's law practice. On this point, Opinion 57 of the ABA Committee is instructive. It states, in part:

> It is not necessarily improper for an attorney to engage in a business; but impropriety arises when the business is of such a nature or is conducted in such a manner as to be inconsistent with the lawyer's duties as a member of the Bar. Such an inconsistency arises when the business is one that will readily lend itself as a means for procuring professional employment for him, is such that it can be used as a cloak for indirect solicitation on his behalf, or is of a nature that, if handled by a lawyer, would be regarded as the practice of law. To avoid such inconsistencies it is always desirable and usually necessary that the lawyer keep any business in which he is engaged entirely separate and apart from his practice of the law and he must, in any event, conduct it with due observance of the standards of conduct required of him as a lawyer.

(See, also, *In Re Rothman*, 12 N.J. 528, 97 A.2d 621, 1953.)

The Committee is also of the opinion that Canon 35 is violated.

The applicable language of this canon is as follows:

> The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his

> duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. . . .

Where a lawyer offices in the same quarters as a collection agency which he owns, manages, or has an interest in, and the functions and activities of the lawyer and the agency are so intermingled as in the above case, it is difficult to ascertain who is the lawyer's client. If the creditors who turn over the accounts for collection are his clients, clearly the corporation is an intervening agent in direct violation of the canon. If the corporation is the client, the canon is still violated, since the collection letters (and inevitably other collection procedures and advice of a legal or semi-legal nature) are handled and controlled at least in part by the corporation and its lay personnel. See ABA Opinion No. 68.

OPINION NO. 8
JUNE 26, 1959

1. Where the sole or main relationship among a group of lawyers is merely the sharing of office space and expenses, they may not list each other's names on their respective letterheads as "associates."

FACTS

Five lawyers occupy the same suite of offices. Each conducts his own law practice independently of the others, except on rare occasions when one or more of them may collaborate on a case. One of the lawyers pays the overhead expenses, for which he charges the other lawyers on the basis of the space each occupies or on some other appropriate basis. Each lawyer keeps his own books and records, maintains his own files, and has his own clients. On the stationery of each lawyer is the following letterhead:

A. B.
Attorney at Law
———— Building
————, Colorado

Associates:
C. D.
E. F.
G. H.
J. K.

OPINION

In the opinion of the Committee, this letterhead violates the Canons of Ethics.

The letterhead is misleading in that it implies that the lawyers are either partners or that they practice together as an association with common clients, records, and files. It may be an attempt to lend weight and prestige to the particular lawyer's name. Where the sole or main relationship among lawyers is merely the sharing of office space and expenses, they should not imply that there is

some deeper relationship by the use of each others' names on their letterheads in addition to their own. To do so constitutes a violation of Canon 27, which prohibits indirect advertising. See, also, Canons 32 and 33 and Opinion 106 of the Committee on Professional Ethics of the American Bar Association.

OPINION NO. 9
JUNE 26, 1959

1. A lawyer who merely rents office space to other lawyers may not represent by his letterhead, telephone listing, or otherwise, that the other lawyers are associated with him nor may he include their names with his in a firm name.

FACTS

A lawyer, A, represents by his letterhead, telephone listing, and otherwise, that he is a member of the firm A, B, and C. By the same means he represents that D, E, and F are associated with or employed by the firm. In fact, no partnership or employer-employee relationship exists, nor are B, C, D, E, and F associated with A in any manner other than to rent space from him.

OPINION

In the opinion of the Committee, these representations violate the Canons of Ethics.

This case is similar to our previous opinion No. 9, but more aggravated. ABA Opinion No. 106, cited therein, prohibits a lawyer from representing that other lawyers are partners (by inclusion in a firm name) when they are merely employees; and, therefore, this cannot be done when they are merely tenants, as above. See Canons 27, 32, and 33. As stated in Opinion No. 9, such representations are misleading in that they imply an association which, in fact, does not exist.

OPINION NO. 10
JUNE 26, 1959

1. A lawyer may not publish a professional card in a newspaper of general circulation.

FACTS

A member of The Colorado Bar Association inquires whether it is a violation of the Canons of Professional Ethics as adopted by the Colorado Supreme Court to publish a standing professional card in a local newspaper. It is proposed that such professional cards, containing no bold-face type, would be published in alphabetical order on an annual basis.

OPINION

Notwithstanding the fact that such publications have, in the past, been permitted in the smaller towns in Colorado and had attained the status of a local custom, the practice has generally been discontinued.

Following the amendment of Canon 27 in 1937, the Committee on Ethics of the American Bar Association promulgated Opinion 182, which held that the amendment to the Canon prohibits the insertion of a professional card in any publication other than an approved law list or legal directory.

In view of the general attitudes of bar associations toward the question of advertising, the policy of the American Bar Association, and the modern facilities for communication among members of the public, there is no sufficient justification for the publication of such cards, and the Committee, therefore, is of the opinion that the publication of such professional cards in a newspaper of general circulation in a community is unethical and violates the Professional Canons.