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Advertising and the Legal Profession

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ADVERTISING AND THE LEGAL PROFESSION

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In this modern era of high-pressure advertising, the practicing attorney must stand aside. He cannot resort to such media as the newspaper, radio and television in building his practice. A lawyer who uses methods of solicitation and advertising which tend to lower respect for the profession in the eyes of the public and to destroy confidence may find himself censured by his local bar association or subjected to appropriate discipline by the courts.

Questions arise frequently concerning the use of circulars, letters, and paid advertisements by today's practitioners. To guide members of the bar and to protect the interests of the layman, the Committee on Professional Ethics and Grievances of the American Bar Association periodically publishes opinions interpreting the Canons of Professional Ethics.[1] Nearly one-third of the 283 opinions thus far issued have dealt with *Canon 27.* Entitled "Advertising, Direct or Indirect," the canon has been amended several times since its adoption in 1908; the last change occurring in 1943 when the canon in its present form was promulgated:

> It is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations. Indirect advertisements for professional employment such as furnishing or inspiring newspaper comments, or procuring his photograph to be published in connection with causes in which the attorney has been or is engaged or concerning the manner of their conduct, the magnitude of the interest involved, the importance of the lawyer's position, and all other self-laudation, offend the traditions and lower the tone of our profession and are reprehensible; but the customary use of simple professional cards is not improper.

The second paragraph of the canon which is not set down in detail here deals with approved law lists and the form of publication therein. This subject will be discussed very briefly later.

The words of the canon relating to solicitation have been given a two-fold application by the Committee on Professional Ethics and Grievances which shall be referred to hereafter as the committee. The first application concerns the problem of solicitation among lawyers. The initial opinion of the committee presented the case of solicitation of business by an attorney from other members of the bar, with whom he had had no previous relations, by means of circulars which stated fees in specific cases and which offered "bargain counter" prices.[2] The use of these circulars was

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[1] All page references to opinions unless otherwise stated are to opinions published in OPINIONS OF THE COMMITTEE ON PROFESSIONAL ETHICS AND GRIEVANCES, American Bar Association (1947).

[2] Opinion 1, pp. 57-58.

declared to be improper, the committee holding that the canon applied to solicitation of lawyers and laymen alike. The holding in *Opinion 1* was reaffirmed in a later case[3] in which it was stated that a lawyer could not properly send a card containing an offer "to appear for them" to other members of the bar living outside his own city. Other examples of improper solicitation among lawyers include the following: (1) solicitation of Mexican divorce practice through a circular which could not be justified as a brief, dignified notice of a specialized legal service sanctioned by *Canon 46;*[4] (2) solicitation of legal business from other attorneys not living within one's own city on a reciprocal basis.[5]

Equally important as the matter of solicitation among lawyers is that of solicitation of professional employment from the public, with special emphasis upon the existence of personal relations. The committee condemned the action of an attorney who had won an important test case in subsequently seeking employment and compensation from others who were benefited by the favorable decision, when such solicitation was not justified by personal relations.[6] In another case of a similar nature, solicitation was allowed because of prior dealings and relations even though the language of the attorney's circular was misleading.[7] A third opinion of the committee[8] disapproved of solicitation by an attorney of strangers whose interests were similar to those of an unsolicited client even though his motive in so acting was to protect the rights of his client.

SEEKING NEWSPAPER PUBLICITY REPREHENSIBLE

The forms of indirect advertising involving use of photographs and newspaper comment declared by the canon to be reprehensible have been thoroughly discussed by the committee in several sharply worded opinions. Specifically barred by *Opinion 42*[9] were the furnishing of pictures or materials for special newspaper or magazine articles concerning divorce, and the posing for pictures of scenes laid in a divorce proceeding for publication in a complimentary manner. In the same vein, publication of a lawyer's picture in a prominent citizens' gallery of a metropolitan paper for a fee declared sufficient to cover only supposed publishing costs was held improper as constituting solicitation of business by advertisement.[10] The committee in forming its judgment in the opinion last cited emphasized that payment for the publicity indicated that an advertisement was intended. *Opinion 143*[11]

[3] Opinion 36, p. 121.
[4] Opinion 120, pp. 249-251.
[5] Opinion 232, pp. 463-464.
[6] Opinion 5, pp. 61-62.
[7] Opinion 7, pp. 66-70.
[8] Opinion 111, pp. 236-237.
[9] pp. 129-130.
[10] Opinion 43, pp. 131-132.
[11] pp. 296-297.

clearly condemned as unethical the action of a member of the bar in permitting and acquiescing in newspaper comment about the case of an unwed mother in whose behalf he was serving professionally, and in posing for pictures with her as she penned the story of her betrayal. Repeated publication by a newspaper of complimentary remarks concerning an attorney, his reputation, and new offices has been labeled indirect advertising even though done without his request or consent.[12] The committee went a step farther than mere disapproval, and imposed upon the attorney the duty of securing cessation of such publication in his behalf.

Two special problems involving solicitation and advertising as discussed by the committee in several of its opinions deserve special mention. The first concerns the sponsoring of newspaper advertisements by bar associations. Declared to be improper is the volunteering of legal information in paid advertisements which might be construed as solicitation of professional employment and which might result in loss of esteem for the profession in the eyes of the public.[13] Not without misgivings, the committee approved publication of educational and instructive information under the following conditions: (1) no pictures or pictorial illustrations may be used; (2) usual features of ordinary advertising such as catch phrases must be omitted, and (3) the article used may not extol or mention individuals, but must be published in the name of the bar association.

ADVERTISING BY ASSOCIATION PERMISSIBLE

In a well-written opinion concerning the question of using advertising facilities to acquaint the public with the benefits of preventive legal services, the committee directed that such a campaign must be carried on by an organized bar association in order to avoid any semblance of personal solicitation or the impression of a selfish desire to create greater professional employment.[14] Furthermore, it must be made clear to the public in a dignified manner consistent with the conditions laid down in *Opinion 121, supra,* that the primary objective of the advertisements is to make beneficial information available to the public at large and to aid practioners in improving their professional services.

The committee approved of the plan of having a panel of lawyers selected and supervised by a bar association to provide legal services to certain low-income groups at reduced rates without any publicity being given to the names of panel members.[15] However, it condemned as solicitation through advertisement of professional employment in behalf of specifically named lawyers, the plan of a group of lawyers to render legal services at low rates to per-

[12] Opinion 62, pp. 156-157.
[13] Opinion 121, pp. 251-253.
[14] Opinion 179, pp. 354-358.
[15] Opinion 205, pp. 415-417.

sons in reduced circumstances who were to be apprised of the plan by publications bearing the names of the particular lawyers involved.[16] *Opinion 179* was cited favorably when approbation was lent to the maintenance of a lawyer's reference service for the benefit of the public, the committee at the same time being very explicit in stating that *Canon 27* is applicable to advertising by bar associations and prohibits the solicitation of professional employment by an organized bar for any particular lawyer.[17]

The second special problem relates to announcement cards sent out by lawyers upon retirement from government service. Three opinions clearly point up the limitations involved in the use of such cards.[18] It is proper for a lawyer upon returning to practice from government service to send out announcement cards to clients and members of the bar, stating simply that he has returned. However, the opinions are consistent in holding that any statement about his experience and connections with particular governmental agencies is unethically improper and constitutes the type of advertising barred by *Canon 27*.

PUBLICATION OF CARDS NO LONGER SANCTIONED

The subject of much discussion among members of the bar has been the use of professional cards. Early opinions, which appeared before the amendment of 1937, declared not to be improper *per se* the publication of ordinary simple business cards giving the attorney's name, address and his legal specialties, this matter being deemed to be one of personal taste or local custom.[19] This opinion specifically sanctioned such publication in local newspapers where established by custom; and it was followed in a later opinion which declared improper the publication of a business card in a daily newspaper in any community where the same is not a custom of long standing generally followed by the practicing members of the particular locality. The committee at the same time stated that a mere list of lawyers in a newspaper was not a law list within the meaning of the term used in *Canon 43*.[20] However, *Opinion 24*[21] said nothing about extending this custom and forbade the publication of professional cards in association or society journals or programs.

Subsequent to the amendment of 1937, committee rulings on the matter of publication of professional cards changed, and publication in newspapers as a matter of local custom is no longer recognized and approved.[22] The customary use now referred to in *Canon 27* is only that use recognized by general custom which re-

[16] Opinion 191, pp. 376-378.
[17] Opinion 227, pp. 453-458.
[18] Opinion 184, pp. 366-367; Opinion 228, pp. 458-459; Opinion 264, pp. 545-548.
[19] Opinion 11, pp. 81-83.
[20] Opinion 69, pp. 164-169.
[21] pp. 98-100.
[22] Opinion 182, pp. 361-362; Opinion 203, pp. 408-411; Opinion 260, pp. 536-537; Opinion 276, 34 A. B. A. Journal 335 (1948).

stricts publication to reputable law lists or legal directories. The omission of the term "local custom" in the 1937 amendment "discloses an intent to withdraw the previous sanction of any local custom permitting such an obvious form of advertising."[23]

Biographical information now permitted to be published in reputable law lists is discussed in the second paragraph of the canon. Once the subject of much dispute, permissible items of information were listed in the amendment of 1940. The canon itself should be consulted in case of doubt.

LAW AND ETHICS IN A WORLD AT WAR*

JACK FOSTER
Editor, Rocky Mountain News

Ladies and Gentlemen of the Colorado Bar Association:

May I call to your minds a picture from the past? Just a while ago—five, ten, forty, fifty years—a young man and a young woman stood before a bank of seven old gentlemen in somber black robes. Their cheeks were shining; their eye were burning with the blessed idealism of their years. Their lips were saying in hushed cadences:

> I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land . . .
>
> I will employ for the purpose of maintaining the causes confided in me such means only as are consistent with truth and honor, and will never seek to mislead the Judge or jury by any artifice or false statement of fact or law . . .
>
> I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed or delay any man's cause for lucre or malice . . .

There was a silence in the panelled room when they had finished. There was a quiet in the faces of everyone present. For these young people had taken the oath to protect, as God gave them the strength to do, the body of law against the eternal conspiracy of men of evil purpose. They promised, at the same time, if given the chance, to add new toughness to the fiber of law, so that at least in their time and place the poor and oppressed might say: Here was our only protection!

Who were this young man and woman? They were you, Ladies and Gentlemen of the Colorado Bar Association . . . just a while ago.

I will not ask you at this pleasant luncheon in one of the most pleasant of hotels to examine yourself and ask: How far have I strayed? That might be embarrassing to you—and me. That might disturb your dreams. It might even be considered impolite.

[23] Opinion 182, p. 362.

* An address given before the 51st Annual Meeting of the Colorado Bar Association at Colorado Springs, October 14, 1950.