

Nebraska Ethics Advisory Opinion for Lawyers
No. 68-4

LAWYERS IN A FIRM LIMITING THEIR PRACTICE TO PATENT, COPYRIGHT, AND TRADEMARK LAW MAY ANNOUNCE THE OPENING OF A NEW OFFICE AND THE ASSOCIATION WITH THE FIRM OF A REGISTERED PATENT ATTORNEY BY SENDING TO LOCAL LAWYERS ONLY AND BY PUBLISHING IN A LOCAL LEGAL JOURNAL A BRIEF AND DIGNIFIED ANNOUNCEMENT THEREOF.

CANONS INTERPRETED: (Professional Ethics)

Canon 27: Advertising, Direct or Indirect

Canon 46: Notice to Local Lawyers

A Nebraska attorney whose law firm apparently limits its practice to Patent, Trademark and Copyright law, has submitted to the Advisory Committee a proposed announcement with a request that it be reviewed before it is mailed to "the legal profession in Nebraska." The proposed announcement states that the firm is "specializing" in the fields of law above noted; that it is opening a new office in an adjoining state; and that a registered United States Patent Attorney named therein has become associated with the firm.

We are concerned here with the application of two Canons: Canon 27 prohibits the solicitation of professional employment by circulars or advertising, direct or indirect.

Canon 46 was originally adopted August 31, 1933. In 1946 it was retitled and redrafted to its present wording. We believe it pertinent to set forth here both the titles and texts of the original and amended Canon 46.

Prior to 1956 this canon was titled "Notice of Specialized Legal Services," and 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."

As redrafted in 1956 Canon 46 was titled "Notice to Local Lawyers." and reads as follows:

"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 the form which does not constitute a statement or representation of special experience or expertness."

An examination of the opinions by the Standing Committee on Professional Ethics of the American Bar Association reveals that none has interpreted Canon 45 as amended in 1956 with reference to the propriety of announcements of the type here proposed. Two formal opinions interpreting Canon 46 prior to the 1956 amendment shed some light on the inquiry posed here.

On February 19, 1938, the American Bar Association Committee issued Formal Opinion No. 175. There a lawyer inquired whether it was proper for him to use a professional card stating this practice was limited to corporations, wills and estates, and divorces. While here we are concerned with an announcement to be circulated by mail, and not with a professional card, certain statements in that opinion are applicable. After setting forth a replica of the proposed professional card, the opinion stated:

"As now amended Canon 27 does not detail the matter which may be included in the 'simple professional card.' Within certain limits. such must be a matter of personal

taste, though it is doubtful whether it should ever include more than the attorney's name, and address and some designation as 'Attorney at Law.' We are of the opinion that it is not permissible to include in a simple professional card language indicating that the lawyer restricts his practice to any particular class of work not general recognized as a specialty. Obvious examples of the latter are 'Admiralty' and 'Patents, Trademarks and Copyrights.' Any class of work which the average lawyer is equipped and willing to handle cannot be said to be a specialty despite the fact that a lawyer may restrict himself to such a class of work and acquire an unusual degree of proficiency and experience in handling the same."

The opinion held that the card in question was not a "simple professional card", but indicated that a law practice limited to the handling of patents, trademarks and copyright matters is a specialty that may be designated on a professional card.

On February 15, 1936, (again prior to the amending of Canon 46) the same Standing Committee on Professional Ethics issued Formal Opinion No. 152. It ruled therein that an attorney, even though registered as "Patent Attorney" may not solicit professional employment in patent and trademark matters by circulars or advertising, or by professional interviews or communications not warranted by professional relations; and that the use by a patent attorney of the word "Patent Law" or "Patent and Trademark Practice" on ordinary simple business cards, was not, per se, improper.

In the light of these opinions and the present text of Canon 46, we conclude that:

1. The proposed announcement employs the phrase "specializing in Patent, Trademark, and Copyright Law". In this form it appears to violate that part of Canon 46 which prohibits "a statement or

representation of special experience or expertness." We suggest that it be rephrased to indicate that the practice is limited to the branches of the law mentioned and that the term "specializing" be deleted.

2. It is proper for the members of such law firm to announce the opening of a new office in another state.

3. It is proper to announce the name, and the association with the firm of a Registered United States Patent Attorney.

4. The announcement may be properly sent by mail to other lawyers, but only in the cities wherein the law firm maintains its offices; and may not be sent to other lawyers in the states where it maintains offices.

5. The law firm may also publish in a local legal journal in each of the cities where it maintains offices, a brief and dignified announcement of its availability to serve other lawyers in the limited fields set forth.

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