

Nebraska Ethics Advisory Opinion for Lawyers
No. 72-9

THE SUGGESTED ANNOUNCEMENT BY THE INQUIRER
AS TO THE AVAILABILITY OF HIS FIRM AS AN
ASSOCIATE IS APPROVED.

CODE PROVISIONS INTERPRETED:

Canon 46. 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.

DR 2-105 (A)(3). A lawyer available to act as a consultant to or as an associate of other lawyers in a particular branch of law or legal service may distribute to other lawyers and publishing legal journals a dignified announcement of such availability, but the announcement shall contain a representation of special competence or experience. The announcement shall not be distributed to lawyers more frequently than once in a calendar year, but it may be published periodically in legal journals.

FACTUAL SITUATION

The inquirer desires to make known the availability of his firm as an associate in certain areas of the law by the distribution by mail to city and village attorneys of an announcement to this effect.

DISCUSSION

The extent to which a lawyer may thus make known to his fellow practitioners his desire to serve them in a consulting capacity has been the subject of considerable attention by the American Bar Association Committee.

We have set forth above the text of Canon 46 as it was amended in 1956 and as it existed just prior to the adoption of the new Code of Professional Responsibility. Formal opinion 194 (April 22, 1939) contains a helpful discussion of the problem and the attitude of the ABA Committee at that time. An earlier draft of Canon 46 read as follows:

"When 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. "

This was repeatedly interpreted to be limited to the practice of admiralty, patents, trademarks and copyrights. The 1956 amendment opened the door to those lawyers who desire to do counsel work for other lawyers.

Informal opinion 980 (July 3, 1967) deals with an announcement regarding patent and trademark practice and makes reference to formal opinion 203 which also deals with patent and trademark practice. It is helpful as a discussion of the basic problem involved. Informal opinion 1024 (May 29, 1968) is somewhat more informative in that it refers to a proper announcement that might be distributed by a former public official with reference to his availability as a consultant in eminent domain proceedings and contains a suggested form of announcement.

The new Code of Professional Responsibility, as quoted above, adopts a somewhat different approach to the matter and this, of course, we should consider as controlling. It is noted that the wording of this disciplinary rule is precisely the same as in the tentative and preliminary drafts.

Informal opinion 1168 (February 4, 1971) deals directly

with the proper content of such an announcement as the inquirer desires to circulate and the announcement proposed therein is of particular interest. The inquiry is similar to that discussed in informal opinion 1024 in that it involves a former public official.

The announcement proposed by the inquirer will be prepared on the stationary of his firm and is as follows:

"Our law firm is available to act as an associate to city and village attorneys in the general revision and codification of ordinances for cities of the first and second classes and for villages.

This notification is being sent only to city and village attorneys."

CONCLUSION

The announcement as set forth above has the approval of the Committee.

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