

FORMAL OPINION NO. 2*

ADVERTISING AND ETHICS

The Committee on Professional Ethics has been requested to render its advisory opinion as to the propriety of certain forms of advertising prevalent in Idaho.

The present inquiry was prompted by an advertisement published in an Idaho newspaper consisting of a picture and certain self-laudatory remarks.

The attorney, a recent graduate from a reputable law school, upon being reprimanded by the Board of Commissioners of the Idaho State Bar, assured the Commissioners he had instructed the printers to delete the laudatory remarks in future advertisements.

This unusual incident indicates a need for a better understanding of Canon 27.

The function of the Committee on Professional Ethics is to interpret, not enforce, the Canons, and this opinion is advisory only.

Rule 151 of The Rules of the Board of Commissioners of the Idaho State Bar Governing Conduct of Attorneys provides:

"Rule 151. The Canons of Professional and Judicial Ethics adopted by the American Bar Association and now (1951) in effect are hereby adopted as Canons of Ethics of the Idaho State Bar."

Because the American Bar Association has, from time to time since 1951, amended the Canons, some question has arisen as to the legal effect of the amendments in light of the provisions of Rule 151. The better view is that the authority of the Canons is derived, not from the fact that they are approved by the bar associations and courts, but because they are statements of principles and rules accepted and acknowledged by reputable attorneys and are recognized and applied by the courts in proper cases (Hepp v. Petrie, 195 Wisc. 350, 200 NW 857). However, inasmuch as Rule 151

does not provide for adoption of amendments without further action by the Supreme Court, it is the opinion of this Committee that any amendments adopted by the American Bar Association since 1951 are not a part of the Canons in effect in Idaho.

Canon 27 deals with advertising, direct or indirect, and provides as follows:

"ADVERTISING, DIRECT OR INDIRECT

"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 lawyer 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 like 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.

"Publication in reputable law lists in a manner consistent with the standards of conduct imposed by these canons of brief biographical and informative data is permissible. Such data must not be misleading and may include only a statement of the lawyer's name and the names of his professional associates; addresses, telephone numbers, cable addresses; branches of the profession practiced; date and place of birth and admission to the bar; schools attended, with dates of graduation, degrees and other educational distinctions; public or quasi-public offices; posts of honor; legal authorships; legal teaching positions, memberships and offices in bar associations and committees thereof, in legal and scientific societies and legal fraternities; the fact of listings in other reputable law lists; the names and addresses of references; and, with their written consent, the names of clients regularly represented. A certificate of compliance

with the Rules and Standards issued by the Standing Committee on Law Lists may be treated as evidence that such list is reputable.

"It is not improper for a lawyer who is admitted to practice as a proctor in admiralty to use that designation on his letterhead or shingle or for a lawyer who has complied with the statutory requirements of admission to practice before the patent office to so use the designation "patent attorney" or "patent lawyer" or "trade-mark attorney" or "trade-mark lawyer" or any combination of those terms."

Origin of Canon

In the early days of the Bar the law was considered primarily as a form of public service and not the source of a livelihood. The dignity thus acquired has ever since been preserved.

Since the practice of law is now, for most attorneys in this country, a source of livelihood, what are the reasons for continuing the proscription of advertising and solicitation?

In the first instance, it must be remembered that attorneys are officers of the court and advertising and solicitation, in addition to commercializing our profession, necessarily has deleterious effects on the administration of justice. Also, such practices tend to incite litigation, and have the harmful effect of tempting the attorneys who advertise and solicit to use improper means to accomplish their grandiose claims.

For a newly admitted attorney the temptation to advertise is indeed great. The senior members of the Bar are always the object of public attention as a result of their close contacts with business and society leaders. It must be remembered the distinction between this and advertising is that the latter draws attention to the individual's alleged pre-eminence as an attorney, while the former reflects more on the personality and ability of the individual.

Forms of Advertising in Idaho

Quite obviously, the newspaper advertising referred to at the outset of this opinion is in violation of Canon 27, but what about the other forms of advertising employed from time to time in Idaho?

Clearly, local custom does not justify advertising (ABA Ops. 4 and 115).

Announcements. The guidepost with regard to announcements by attorneys is the "personal relations" provision of the first paragraph of Canon 27. Anything that is "not warranted by personal relation" is unprofessional. Therefore, an attorney opening an office for the first time, moving, leaving for military service or returning, may by card advise those persons with whom he had established such personal relations as to warrant a belief that the recipients are genuinely interested in the news. Advertisements in general circulation newspapers are prohibited.

In the case of a partnership the card should be sent by the firm, not by the individual. In all cases good taste and dignity should govern the content of the announcement.

Inasmuch as all newspaper advertising is impersonal and tends to result in the solicitation of business, the practice in some localities in Idaho of announcing summer closing hours is to be discouraged, especially where individual or firm names are used. However, a notice by the local or district bar association as to closing hours would not be improper.

DATED this 1st day of November, 1956.

SUPPLEMENT TO FORMAL OPINION NO. 2

In rendering the foregoing Opinion, the committee is not unaware of the practice prevailing in some communities in Idaho. From territorial days it has been a practice for attorneys in certain communities to carry professional cards in the local newspaper. As late as the early 1930's this practice prevailed for example in Lewiston with respect to

one firm. However, this card was actually a courtesy card carried by the newspaper for the firm representing it. However, the practice has long since been discontinued. Canon 27 of the American Bar Association formerly recognized the publication or circulation of ordinary simple business cards as a matter of professional taste or local custom. This rule prevailed from 1908 until 1937. The omission of this provision in Canon 27 since 1937 evidences the current trend of the thinking of lawyers on this subject.

This committee is not unmindful of the fact that the practice of carrying professional cards in local newspapers lingers in some of the smaller communities in this state. In giving the present opinion the committee does not intend to cast any reflection on lawyers who, in good faith, have thus advertised in the community papers pursuant to local custom in the past. Our opinion is directed to the future. We feel that the Bar throughout the State should take the position and follow a practice in conformity with Canon 27 as it now stands; hence, the present opinion rendered by the committee.

*This Opinion is obsolete. It was rendered before the adoption of the Idaho Code of Professional Responsibility and is further outdated by the decision in Bates v. State Bar of Arizona, 433 U.S. 350 (1977).