

PUBLICITY FOR LAWYERS

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A WELL-ESTABLISHED rule of long standing holds it improper for a lawyer either to solicit professional employment or to advertise himself. The words "solicitation" and "advertising" as used in this connection are not synonymous. Advertising is objected to on the ground that it is professionally undignified.¹ Solicitation, it is feared, may stir up litigation.² The reactions of members of the bar to the practices described by these words are sufficiently related to justify consideration of both in a single article.

If the prohibitions against publicity for legal practitioners were carried to their logical conclusion it would be difficult, if not impossible, in many modern urban centers, for the client in need of assistance to locate the lawyer who is ready and qualified to serve him. But if any relaxation is allowed, it is clear no matter how difficult the task a line must be drawn somewhere between acts permitted and those frowned upon. The present inquiry attempts to determine where that line lies.

Before approaching the details it may be well to note an interesting contrast with the field of medicine. There the resources of the physician, the nurse, the technician, the scientist are made available in public health services, and through private clinics, dispensaries and by quarantine and other legal regulations. Insurance companies and drug manufacturing firms advertise the value of medical examinations and call attention to the importance of interest in health. The average citizen has been informed of the place of preventive medicine in the modern social system. It has become a part of his subconscious thinking. Does the public recognition of the value of preventive law require that the bar re-think the rules relating to publicity for lawyers?³

A brief historical reference may help to set the stage for later discussion. Much information is available as to the steps by which a group of lay persons grows gradually into a carefully trained, selected and disciplined body of specialists. The determination of the public to substitute for civil

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¹ Advertisement: Information or knowledge communicated to individuals or the public in a manner designed to attract general attention. Bouvier's Law Dict. (3d Revision 1914). To advertise (3) to give public notice: to announce publicly, esp. by a printed notice *Webster's New Int'l. Dict.* (2d Ed.). Advertise: to give public notice *Black Law Dict.* (3rd Ed. 1933).

² Solicit: (4) to make petition to: to entreat, importune; (5) to endeavor to obtain by asking or pleading *Webster's New Int'l. Dict.* (2d Ed.); to ask for with earnestness, to make petition, to endeavor to obtain, to awake or invite to action, to appeal to, or to invite *Black Law Dict.* (3rd Ed. 1933).

³ For a discussion of the subject of solicitation and advertising by lawyers see Costigan, Cases on the Legal Profession and its Ethics, West Pub. Co. (2d Ed. 1933) p. 328 ff.; Hicks, Organization and Ethics of Bench and Bar, Lawyers Co-Op Pub. Co. 1932 p. 238 ff.; Cheatham, Cases and Materials on the Legal Profession, Foundation Press 1938, p. 141 ff.

war an established and respected system of jurisprudence, may have contributed to the rise of a legal profession. In the transition period, laymen, who had facility in some phase of the conduct of legal procedure either were pushed, or forced their way, to the attention of the public. The unrestrained conduct of these intermediate persons sometimes excited public criticism, while it was, perhaps reluctantly, admitted that they filled a need. The Athenian syncophant is an illustration.⁴ Efforts to restrict his undesirable self-seeking activities included a law against the charging of fees.⁵ A similar step was taken in Rome⁶ though it is doubtful if such legislation was enforceable.

Counters, pleaders and the early apprentices in mediæval England furnish further examples of what may be called semiprofessionals.⁷ Objection to their activities is recorded.⁸ The impression is created, in the mind of the reader, that after the Norman Conquest Englishmen, as litigants, held much the same aggressive point of view they had found useful in their civil wars.⁹ The layman before the courts had to be repressed because of his excess of zeal, which sometimes took the form of forgery, perjury, conspiracy, deceit, and thereby affected unfavorably the administration of justice. More particularly applicable to the rising class of lawyers were prohibitions against champerty,¹⁰ maintenance,¹¹ barratry.^{11a} Fomenting litigation, where the fomenter might gain personal profit from his activities, appears to have been viewed with general, and perhaps justifiable, alarm. Insofar as "advertising" would enable a member of this class to function more effectively, it, too, would seem logically to have been contrary to the developing public policy of professional regimentation. It is reasonable to expect that rules and concepts, formulated in such a period of transition respecting an embryonic profession, would carry over into the period of its maturity because of their own inertia, if for no other reason.

Three other suggestions deserve consideration here. The rule against publicity for lawyers may be preserved because it is: part of an historical

⁴ Bonner, *Lawyers and Litigants in Ancient Athens*, U. of Chi. Press, p. 63 ff. Bonner & Smith, *The Administration of Justice from Homer to Aristotle*, Vol. II, pp. 42, 55.

⁵ Bonner & Smith "The Administration of Justice from Homer to Aristotle, Vol. II, pp. 10, 11.

⁶ Thornton *Attorneys at Law*, Vol. II, p. 688 (Note). For a recent discussion of the stages in the development of the Roman Bar, see Cicero, Pliny and the Roman Bar, 25 *Michigan S.B.J.* 65 (1946).

⁷ Cohen, *History of the English Bar*—Sweet & Maywell (1929) p. 160, p. 458.

⁸ Holdsworth, *History of English Law*, Vol. II, pp. 457-9.

⁹ *Idem*, III, pp. 394-400.

¹⁰ *Champerty*—A bargain made by a stranger with one of the parties to a suit by which such third person undertakes to carry on the litigation at his own cost and risk in consideration of recovering if he wins the suit, a part of the land or other subject sought to be recovered by the action. (Black's Law Dict., 3rd Ed., 1933.)

¹¹ *Maintenance*—An unauthorized and officious interference in a suit in which the offender has no interest to assist one of the parties to it, against the other, with money or advice to prosecute or defend the action. (Black's Law Dict., 3rd Ed., 1933.)

^{11a} *Barratry*—the offense of frequently exciting and stirring up quarrels and suits, either at law or otherwise. *Embracery*—the attempt to influence a jury corruptly—(Black's Law Dict., 3rd Ed., 1933). See Holdsworth, Vol. II, pp. 300, 311, 416, 452, Vol. IV, 520, 521 tracing the legislation, Vol. V, p. 201.

monument recording the attainment by lawyers of professional status; an answer by the bar to criticisms directed against it by persons from without; part of the machinery to accomplish internal self-regulation by limiting the opportunities for unrestricted competition.

Practitioners have no great difficulty in reaching the conclusion that a profession differs from a business.¹² They feel it desirable that the public be kept aware of the distinction. One of the characteristics of professional maturity, may well be the willingness of the group to police itself not only with respect to conduct already covered by the criminal law, but on a higher level in matters of good taste. When this willingness reaches the point that the responsibility for enunciating and enforcing a code is assumed by the profession, the group, obviously, has passed an important milestone. There may still be statutes by which the community from its own observation point, and working through the legislative branch of the government, imposes upon the bar rules relating to soliciting.¹³ They may continue for historical reasons. But today the responsibility for preventing whatever improprieties may result from legal advertising has largely shifted to canons of ethics adopted by the American Bar Association and interpreted by its Committee on Ethics and Grievances. This is something quite different. Lawyers may take pride in adhering, not merely to minimum standards set by the legislature, but to their own higher set of ethical principles. When viewed from this angle, the canons of legal ethics requiring restraints on publicity may well be a monument to professional progress.

Lawyer baiting is not an unknown practice.¹⁴ One problem for the professional man is whether to ignore or attempt to remedy. When the charge is made that a lawyer is motivated so much by self-interest that he stirs up litigation in the hope of earning a fee, it is at least some answer that he has not, in the first instance, solicited employment nor been guilty at a later stage of forcing the dispute into litigation where adjustment out of court is reasonably possible and satisfactory to the client. The perpetuation of the rule against publicity by lawyers may, therefore, be a defense measure. When one compares the economic basis of the individual practitioner, dependent for his livelihood upon his clients, with that of his critics, some of whom may be on a salary paid by organizations buttressed at least in part by the efforts of public relations experts, professional restraint deserves comment.

Unrestricted competition for legal business among law offices could hardly hope for a favorable reception by laymen. If each law office was free to scramble for the more desirable clients and cases, the profession itself would lack necessary unity. At the other extreme of solutions lies some form of socialized law practice in which the freedom of the client to select

¹² Cohen, J. H.—*The Law—Business or Profession*, G. A. Jennings, Co., New York, Revised Edition 1924.

¹³ Miller—*Criminal Law*—West Pub. Co. 1934, p. 458.

¹⁴ The extensive literature of criticism of the legal profession prior to World War II contains such gems as F. Rodell, *Woe Unto You Lawyers*, Reynal and Hitchcock, New York (1939).

his attorney may be severely regimented. The present compromise of restricted publicity is, perhaps, subject to improvement; but at least it is a custom familiar to many persons and should serve until some better answer is discovered.

One may summarize by arguing that solicitation and advertising are both part of the public relations problem of the legal profession. They may be permitted only to the extent that, on a dignified basis, they help the client, acting without compulsion or inducement, to select and locate his attorney. Rules of prohibition may be justified as aids toward professional dignity and protection of the prestige of the administration of justice. Historically we may assume that objection to solicitation involving more activity by the lawyer was first to be singled out and recognized as undesirable. Criticism of advertising appears to have come later as principles of good taste crystallized.

CANON #27

Whatever the reasons behind it, the rule against publicity by lawyers has persisted. It is expressed in Canon #27 of the Canons of Professional Ethics of the American Bar Association. This canon, entitled "Advertising, Direct or Indirect," was adopted in 1908.¹⁶ If one may judge from the published report, the discussion evoked only a single unfavorable comment on behalf of "the young and aspiring members of the Bar." In its original form it consisted of three parts: a statement that the "most worthy and effective advertisement possible" is "the establishment of a well-merited reputation for professional capacity and fidelity to trust"; a brief statement that "the publication or circulation of ordinary simple business cards"—is not per se improper; a longer statement branding as "unprofessional" solicitation "by circulars or advertisements or by personal communications or interviews not warranted by professional relations"—through "touters"—by "furnishing or inspiring newspaper comments . . ."

This wording of the canon continued until 1937¹⁷ when two major changes were adopted. The statement as to the "most worthy and effective advertisement" was deleted. In some detail the canon lists steps which may be taken by a lawyer in the direction of advertising including: a simple professional card and publication of specific information in an approved Law List. (Originally Canon 43.) The undesirable forms of advertising are set down as before.

In 1940¹⁸ the material in the canon was again revised. In the first paragraph were placed the activities regarded as unprofessional. Emphasis was directed to the undesirability of the use of "touters." In the second paragraph were assembled provisions indicating the type of advertising which is permissible.

¹⁶ 33 Rep. American Bar Association 85 (1908).

¹⁷ 62 Rep. American Bar Association 350 (1937).

¹⁸ 65 Rep. American Bar Association 97 (1940).

In 1942¹⁹ further comparatively minor amendments in phrasing were made with respect to Law Lists and Canon 43.

In 1943²⁰ a few changes were adopted including additional items of information which a lawyer may include in the material which he sends to a Law List.

In 1944 Canon #27 and the texts of Canon #43 as previously amended were published.²¹ In its present form it stands for the proposition—not that a lawyer may not advertise—but that certain activities in the field are approved and others are declared to be unprofessional.

Canon 28 relating to "Stirring up Litigation Directly or Through Agents" has remained in its original form. It is designed to discourage commission of the common law offenses such as maintenance and champerty. The text is divisible into three parts. It brands as unprofessional the act of volunteering "advice to bring a law suit except in rare cases." It warns that stirring up strife and litigation is unprofessional as well as indictable at common law. It enumerates a number of discreditable practices and finally calls upon lawyers who have knowledge of violations of the rule to "inform thereof."

Since Canons 27 and 28 are so closely related, it is convenient to discuss the rulings under both of them as if only one canon were involved. The same reasons which prohibit a lawyer actively from soliciting legal employment in out of court matters would seem to apply when the contemplated action is before a judicial body.

Other canons which should be kept in mind in the discussion are: #33 relating to "Partnerships-Names"; #35 "Intermediaries"; #40 "Newspaper Articles"; #46 "Notice of Specialized Legal Service."

Interpretations of the Rules of Professional Ethics

During the last quarter century several bar associations have created special committees²² with the responsibility inter alia of supplying written opinions of an advisory nature respecting the application of canons of ethics to specific cases.^{22a} The educational, admonitory and preventive values of

¹⁹ 67 Rep. American Bar Association 124, 149 (1942)—Sec Opinion of ABA Committee 249 on definition of "Addresses".

²⁰ 68 Rep. American Bar Association 239 (1943).

²¹ 69 Rep. American Bar Association 558 (1944).

²² The material contained in this article was secured from the following published opinions of Committees on Ethics and Grievances: American Bar Association: Journal A.B.A.; California State Bar Association: See Vols. 3, 4, Calif. State Bar J.; Los Angeles Bar Association: Bul. Vol. 3, No. 13, p. 99; Michigan State Bar Association: 1-80 inclusive; Mich. State Bar J.; Missouri State Bar Association: New York County Lawyers Association; Oklahoma State Bar Association: and a few others whose available published opinions were not numerous. Many state and city bar associations do not publish their opinions. In some instances the published opinions have no number and are therefore referred to by the page and periodical containing them.

^{22a} For an elaboration of the A.B.A. rules, see Rules of Professional Conduct of the State Bar of California, especially Rule 2 relating to the solicitation of professional employment and Rule 2a relating to "Veterans" as amended February 19, 1946.

such pronouncements are obvious. Some associations have published their opinions. The present article summarizes certain of these rulings with a view to comparing their application to the fact situations. The effort is complicated by the variety of possible categories.

One may classify this material from the standpoint of the person who is doing the soliciting—the attorney himself or another. That other may be a law clerk, a “runner” or touter, a client, a friend, or even a corporation. Another grouping is by way of the media employed: neon signs, directories, radio programs, photographs, newspapers, and letterheads.

The appeal may be made to the general public; to a particular group of persons; to one's own clients. Other factors include: the degree of directness of the appeal to the prospective client; the degree of definiteness of ascertainment of the employment sought; the litigious or non-litigious character of the employment sought; the extent to which the probability of institution of action depends upon the activity of a lawyer; the desirability of massing claims.²³

Direct Solicitation of the General Public

Devices amounting to solicitation and stirring up litigation are improper. Arrangements to facilitate the effort of the public to locate a lawyer are not prohibited. Plans to see that the client finds a lawyer qualified to handle his particular case are still embryonic.

The following have been held to be for the convenience of the public: where the windows are too small, a display on the side of the building containing the name and profession in small block letters,^{24a} an office door^{24b} but not where the names include that of a law clerk not admitted to practice, as this is misleading; and for the same reason, where the name is that of an attorney not admitted to practice in the same state, unless so qualified as to exclude any inference that the attorney is a member of the local bar.

The following have been frowned upon: a neon sign,^{24c} a display on the office door of the name of an adjuster,^{24d} the employment of a press agent by attorneys to obtain for them desirable and to suppress undesirable publicity.^{24e}

²³ See Cheatham: Cases and Materials on the Legal Profession, Page 161, for a collection of data.

^{24a} Mich. 34: Attorney uses the side of a building to display his name and profession in small block letters where the office windows are too small for the purpose.

^{24b} N. Y. Co. 79: A firm puts on the office door the name of a law clerk soon to be admitted to the bar. This is improper if it might aid in misrepresenting a layman as a lawyer. N. Y. Co. 134: If the name of a lawyer not admitted to practice in a particular state is put on the door of an office in that state, it should be so qualified as to exclude any inference that the attorney is a member of the local bar. N. Y. 274.

^{24c} Mich. 11, 1433. (A neon sign is frowned upon.) 24 Jour. A.B.A. 401 (1938); 26 Jour. A.B.A. 232

^{24d} A.B.A. 214: Arrangement between a firm of lawyers and another lawyer for display of the latter's name as “adjuster” on the firm stationery and “office door”. Solicitation of business by the adjuster and his recommendation of the law firm for handling resulting legal work is disapproved. See also Los Angeles 145 where the sign “Legal Clinic” used by an individual lawyer was disapproved.

^{24e} 12 Los Angeles.

In one case the lawyer occupied an office in a building located at the junction of two streets. Upon two walls the owner maintained a directory of his tenants. This directory was plainly visible from the two streets. The committee felt that it was a question of taste rather than ethics for the lawyer to allow his name to appear on this directory.^{24f}

In one situation a solicitation was attempted to be justified on the ground that a local custom existed permitting it. Dismissing this defense, the Committee said:

. . . The use of the letter is not justified by the custom alleged to prevail in Washington before the departments and that if any such custom exists it is itself to be condemned as contrary to proper standards of professional conduct.^{24g}

The use of the radio involves several problems which will be considered hereafter. Here it is sufficient to indicate that if the attorney participates in a commercial broadcast, both the use of his name and the propriety of the content of the broadcast may be considered.^{24h}

A Lawyer's Professional Card

The approved contents of a lawyer's professional card was set down originally in Canon #43 in the following language:

A lawyer's professional card may with propriety contain only a statement of his name (and those of his lawyer associates), profession, address, telephone number, and special branch of the profession practiced. The insertion of such card in reputable law lists is not condemned and it may there give references or name clients for whom the lawyer is counsel, with their permission.

In 1937 this material was transferred to Canon #27 and a new Canon #43 was written.

The portion of the new Canon #27 dealing with the subject is: 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

^{24f} 8 Los Angeles B.B. 279.

^{24g} A.B.A. 4.

^{24h} Los Angeles 147: It is unethical for an attorney who takes part in a commercial radio broadcast to permit his name to be broadcast. It is also improper for an attorney to take part in the broadcast of a simulated judicial proceeding which has as its purpose entertainment (1944). A.B.A. 166 relates to participation by a Judge; See also 24 Journal A.B.A. 334; *Rosenthal v. Shepard Broadcasting Co.*, 12 N. E. (2d) 819.

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 fraternities; the fact of listings in other reputable law lists; and, with their written consent, the names of clients regularly represented; the names and addresses of references.

A lawyer's professional card is, therefore, different from an announcement such as might be used to indicate opening a law office, or the formation of a partnership.

These announcements sent ordinarily to other members of the legal profession or to persons standing in a special relationship to the lawyers are not included in the present section.

The most usual place in which to exhibit a lawyer's professional card or the material indicated in the revision of Canon #27²⁵ is an approved law list. After much experimentation, the matter of approved law lists was determined in 1937 by the new Canon #43 reading:

Approved Law Lists. It shall be improper for a lawyer to permit his name to be published after January 1, 1939, in a law list that is not approved by the American Bar Association.

The Committee on Law Lists of the American Bar Association handles the matter of approval or disapproval.

But there are many other places where the resourceful lawyer may display his professional card. The general rule again is that it may not be used as a means of advertising but can be employed for the convenience of the public.²⁶ Among the disapproved places are: newspapers;^{26a} association or society journals or programs;^{26b} insurance magazines;^{26c} trade magazines;^{26d} lists of laymen and lawyers even though there is no indication that the listee is a lawyer.^{26e}

The distribution of professional cards (perhaps in the form of an announcement) has also been disapproved. It may not be sent to: fellow

²⁵ See also A.B.A. 255 as amended, 1944. 11 Los Angeles B.B. 331 (1936)—a collection of statutes and list of attorneys.

²⁶ Mich. 33: A lawyer may not use a business card as a means of advertising. 3 California; N. Y. 239; L. A. 160.

^{26a} N. Y. Co. 311: It is improper to publish a professional card in the newspaper; 37 L. A.; A.B.A. 69: A Professional Card may not be published in a metropolitan daily paper.

^{26b} A.B.A. 24: A Professional Card may not be published in Association or Society journals or programs. 11 Los Angeles—a Journal devoted to interests of a social organization. 5 Calif. Programs; 20 Chicago B.R. 18 (1938); 22 Chicago B.R. 14—"Listing in College Directories". N. Y. Co. 50.

^{26c} A.B.A. 116: A Professional Card may not be published in an insurance magazine.

^{26d} A.B.A. 24: A Professional Card may not be published in a trade magazine. But see 37 Los Angeles: Card in trade journal (a matter of local custom).

^{26e} A.B.A. 233: Listing of lawyer's name in a list of laymen and lawyers as collectors, adjusters, abstractors, tax consultants, and the like violates Canon 27 even if there is no indication that the listee is a lawyer.

members of the bar if it contains a statement that the sender is prepared to appear for them;²⁶ⁱ to the general public in the form of diaries with the professional card on the cover;^{26g} to collection agents or insurance agents;^{26h}. It should not be displayed in hotel lobbies or on calendars.²⁶ⁱ

Even before 1937 and the new Canon 27, the card might not properly contain: a detailed enumeration of various phases of law not recognized as specialties;^{26j} language indicating that the lawyer restricts his practice to any particular class of work not recognized as a special branch;^{26k} the name of a layman as conducting or managing a department of the lawyer's professional business.^{26l}

More recently have come rulings that the use of professional cards for publication should be limited to approved law lists and legal directories.^{26m}

The inclusion of a lawyer's name on a card of a firm of patent attorneys in such a way as to imply that the firm is prepared to furnish their clients with the services of counsel is improper.²⁶ⁿ The contents of the card are scrutinized strictly.^{26p}

The Professional Card in general is another device for aiding the public to find the lawyer. When used in good faith for this purpose, it appears to be not objectionable. But as soon as the lawyer goes beyond this limit, the committees pronouncements are unfavorable.²⁷

^{26f} A.B.A. 36: An attorney may not send a professional card to fellow members of the bar stating that he is prepared to appear for them.

^{26g} A.B.A. 59: An attorney may not distribute diaries with his professional card on the cover.

^{26h} N. Y. Co. 364: It is improper to distribute professional cards to collection agents or insurance agents.

²⁶ⁱ Mich. 8: It is improper to publish a professional card in hotel lobbies or on calendars.

^{26j} A.B.A. 114: A Professional Card may not contain a lengthy statement of supposed specialties. A.B.A. 11: A Professional Card may not contain a detailed enumeration of various phases of probate and real estate law. Okla. 60: It is not unprofessional for signs and cards to state "Prosecute and Defend Damage Suits." 6 Los Angeles B.B. 124.

^{26k} A.B.A. 152: The use of the words "Patent Law" or "Patent and Trade Mark Practice" on a Professional Card is not *per se* improper. A.B.A. 175: It is not permissible to include on a Professional Card language indicating that the lawyer restricts his practice to any particular class of work not recognized as a special branch of the practice.

^{26l} N. Y. Co. 212: It is improper to represent on a card the name of a layman as conducting or managing a department of the lawyer's professional business. A.B.A. 54: It is improper to send notices of a layman's association with a law office to have charge of all collection matters.

^{26m} A.B.A. 182: Canon 27 does not permit the insertion of a professional card in any publication other than an approved law list or legal directory. N. Y. Co. 366: The use of professional cards for publication should be limited to approved law lists and legal directories. 14 Los Angeles: Insertion of the card in a mechanically operated directory device is approved. 11 Los Angeles B.B. 331: Insertion of card in compilation of laws is disapproved.

²⁶ⁿ N. Y. Co. 214: It is improper for an attorney to permit his name to be used on a card of a firm of patent attorneys in such a way that it implies that the firm is prepared to furnish to their clients the services of counsel.

^{26p} 18 Chicago Bar Record 50 (1936) Chicago does not permit adding to a card the words "Member of Chicago Bar Association."

²⁷ The use of Professional Cards by Lawyers: 25 Jour. A.B.A. 200 (1939); 25 Jour. A.B.A. 781; 26 Jour. A.B.A. 347.

Telephone Directory

Problems in the publication of lawyers' names in the telephone directory involve the same distinction between convenience of the public and advertising the lawyer. The name and address may properly appear in the general alphabetical section.²⁸ These minimum facts may also be published in this section in distinctive type when any person listed in such directory by paying a uniform fee may also have his name printed in that section in such type, also uniform as to all, together with additional informative data.^{28a} Insertion in the classified sections involves these same problems.^{28b} But in the classified sections there is another problem—special forms of law practice. The frontier conditions in this country which produced the general practitioner prepared to handle any legal case have been modified by the growth of urban centers and the increasing number of cases requiring legal employment in special fields like taxation and labor law, practice before administrative bodies and the interpretation of a bewildering succession of governmental directives and rulings. It would be

²⁸ A.B.A. 53 reads in part as follows: "As a matter of public convenience, it is desirable that a lawyer have his name listed in the classified telephone directory which the telephone companies authorize. So long as the lawyer's name is listed in such a directory in the usual manner and in the same size and style of type as other names are listed, such listing is not advertising, as there is nothing which will particularly distinguish the name of one lawyer from that of another. Payment for listing of this nature does not alter its character or carry any implication of impropriety. A lawyer who is not a telephone subscriber, but who uses the telephone of the firm with which he is connected or the telephone of some other subscriber, must usually pay for the listing of his name in telephone directories. The listing of a lawyer's name in such directory assumes quite a different character when he pays for having his name published in type of a different style or size from that in which the names of other lawyers are listed. In that event, it becomes a form of advertising, and a lawyer's conduct in causing it to be so published must be condemned." This position was affirmed as to the above point in A.B.A. 123. In A.B.A. 152 the committee said: "However, in that opinion (123) we again directed attentions to the fact that a lawyer should not permit his name to be published in a telephone directory in bold face type or in any other manner to make it conspicuous and distinguish it from the names of lawyers generally published therein"; since the publishing of his name in a distinctive manner is a form of advertising."

In A.B.A. 223 the committee condemned the listing of a lawyer's name in the non-classified section of a telephone or city directory in a distinctive manner. Such as bold face type followed by words indicating the listee is a lawyer. But this ruling was relaxed in A.B.A. 241 overruling in part #223: "The alphabetical sections of such directories, ordinarily are used by an individual who already knows the particular person he wishes to locate and why it is he wishes to find him. The distinctive type and the additional data serve solely as an aid in locating that person. They may make the seeker's task easier and accordingly serve a useful purpose. It is obvious that one engaged in selecting a lawyer to be employed by him would not go for that purpose to the alphabetical section of either a city directory or a telephone directory." See also Missouri 33.

^{28a} See 24 Jour. A.B.A. 909 (1938). In 24 Jour. A.B.A. 401 (1938) appears a note on the ruling of the Cleveland Bar Associations limiting the listings to the same size of type as the others. 18 Oregon condemns bold face type. 19 Calif. holds improper an advertisement or lawyer's card containing Name of Attorney; Nevada, Mexico and Paris Connections; Open Evenings; Address and telephone number. 12 Philadelphia adopts a conservative policy.

^{28b} The ruling in A.B.A. 241 does not apply to classified selections of directories. 46 Michigan; 12 Philadelphia and 19 California all adopt a conservative attitude toward the use of bold face or other distinguishing type.

to the convenience of the public to know whether a particular lawyer is a specialist in one or other of these fields, so that, for example, time could be saved in coming to grips with a situation. However this knowledge of special qualifications may be made available to the lay public, it appears that the rulings do not as yet favor the directory as a medium.^{28c} The rulings go into some detail as to what amounts to advertising^{28d} in telephone directories.

It would appear that the appearance of the lawyer's name in city directories would be subject to much the same set of rules.

Letterheads

The convenience of the public argument seems to support the inclusion on the letterhead of the name or names of the attorneys, the address, the telephone number. But even here there are complications. Canon 33 deals with Partnerships among lawyers and refers particularly to the "use of partnership names". Warning is given to avoid "misleading" or "creating the wrong impression". No one should be "held out as a practitioner or member" of the bar who is not duly admitted to practice. "No false, misleading, assumed or trade name should be used."²⁹

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.²⁹⁻¹

In A.B.A. Opinion 267 the Committee said:

"The continued use of a firm name by one or more surviving partners after the death of a member of the firm whose name is in the firm title is

^{28c} In 24 Journal A.B.A. 401, the Cleveland Bar Association said: "The only exception to the above (general rule) is that a firm of lawyers or an individual who qualifies in the practice of patent law or admiralty law may be listed as such separate and apart from the general classified list of lawyers in your directory and for such listing a change may be made and paid." 46 Michigan states: "Listings under 'Lawyers—Compensation', 'Lawyers—Immigration' and 'Lawyers—Workmen's Compensation', constitute a breach of the Canons of Ethics, as such listings cannot be considered in any other manner than as pure advertising on the part of the lawyer availing himself of such listing. 'Lawyers—Patent' are excepted from this group. Lawyers of this capacity may be listed separately in the telephone directly under 'Lawyers—Patent'. If an individual patent lawyer is associated with a firm which is engaged in the general practice of law, his individual name only and not the firm name, may be listed under 'Lawyers—Patent'. 12 Philadelphia recognizes Patent lawyers as entitled to a special listing." A.B.A. 53 states the general rule: "For similar reasons we must disapprove the insertion of a lawyer's name in such directories under various headings. The very purpose of inserting a lawyer's name under these many headings is, . . . that of 'informing prospective clients' that the lawyer desires their business." But see A.B.A. 152 for limitation upon the right of "patent attorney" to advertise. Canon #45 applies the same rules of ethics to specialists as to the rest of the profession.

^{28d} Limitations upon the privilege include the following: N. Y. Co. 298; Okla. 50; Okla. 30: It is improper to insert advertising matter.

²⁹ N. Y. 79: An unlicensed law clerk's name may not appear on the door (and presumably on the letterhead) even though there is nothing on the door to indicate that it is a law firm.

²⁹⁻¹ 8 Calif. S.B.J. 164—Can a Dead Man Practice Law—Henry J. Jacobson (1933) N. Y. Co. 316.

expressly permitted by the Canons of Ethics. The reason for this is that all of the partners have by their joint and several efforts over a period of years contributed to the good will attached to the firm. In the case of a firm having widespread connections, this good will is disturbed by a change in firm name every time a name partner dies, and that reflects a loss in some degree of the good will to the building up of which the surviving partners have contributed their time, skill and labor through a period of years. To avoid this loss the firm name is continued, and to meet the requirements of the Canon the individuals constituting the firm from time to time are listed."

Where a partner is absent on war service the letterhead may bear an appropriate reference.²⁹⁻²

The presence of a dormant partner may be improper because misleading.²⁹⁻³ And entries which call attention to the continuation of the firm in one family are not favored.²⁹⁻⁴

In general the problems seem to be—what names may properly appear and what reference may be made to specialties.

A partnership between a lawyer in Philadelphia and a lawyer in Washington, D. C., was held objectionable because the D. C. lawyer could not properly call himself a "lawyer" in Pennsylvania. Consequently a letterhead containing the names of A and B as partners with the place of their offices and their individual names was held objectionable. "The vice of the situation is that the clients, who should be protected, would have no sufficient way of knowing that one of the members of the partnership was not a qualified lawyer in Pennsylvania. Additionally, the outside member of the partnership would not be readily amenable to discipline in the Pennsylvania Courts unless it be by way of the Committee on Unauthorized Practice."²⁹⁻⁵

In a somewhat similar situation where the relationship was not a partnership and the letterhead used the word "associates", it was approved.²⁹⁻⁶

The use of names of foreign lawyers not admitted to practice is usually considered under the head of unauthorized practice of the law. In A.B.A. 263 the Committee disapproved the use of the name of the foreign attorney on the local letterhead "even though it is there made clear that the employee is admitted to practice only in a named foreign country". Neither can his name appear as consultant "the proposed service not being a specialized legal service, such as is permitted under Canon 46."²⁹⁻⁷

²⁹⁻² A.B.A. 240.

²⁹⁻³ N. Y. Co. 170. It is not proper for lawyers to operate under a firm name "with a dormant partner not participating in the professional practice, though he may be under legal liability . . ."

²⁹⁻⁴ 25 Jour. A.B.A. 501. Where the inscription was: "January 1, . . . of the John Doe Law Office . . . 82nd Year . . . 1939."

²⁹⁻⁵ Philadelphia 1.

²⁹⁻⁶ New York Co. 374; See also N. Y. Co. 134.

²⁹⁻⁷ See also 27 Chicago B. R. 154, and A.B.A. 175 and 251 deals with announcement cards.

Canon #46 covers Notice of Specialized Legal Service and reads:

"Where a lawyer is engaged in rendering a specialized legal service directly and only to 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."

It is suggested with all respect that the convenience of the public in securing lawyers who are qualified to do a particular type of work is also deserving of consideration.

The language of the Canon makes it clear that a legal periodical and not a letterhead is the recognized medium for reporting specialties. So it is to be expected that the general attitude toward the latter form of publicity will not be enthusiastic.

The addition of material showing specialties in which the lawyer engages is not acceptable.²⁹⁻⁸

One of the more elaborate of these letterheads reads as follows:

.....	Manager	Attorney
	Property Owner's Guide		
	(Address) (Telephone)		
Titles Examined		Land appraised	
Defects removed		Loans made	
Certificates Run down		Legal Advice on all	
		Law and Equity Matters	
Abstracts made			
Escrows handled			
Legal papers executed		"We will save you money.	
Estates Probated		See us first."	

After objection was raised to the above, it was changed to read as follows:

	Secure a Torrens Title—It's a State Guarantee		
	Best Title in the World		
	State Torrens Title Co.		
Estates Probated		Real Estate and Loans	
Titles quieted		Abstracts: Escrows	
Legal advice		Torrens Titles	
	Chief Counsel	
	General Agent	
	(Address)	(Telephone)	

²⁹⁻⁸ Mich. 28: The letterhead should be confined to one profession and should avoid an announcement of a specialty. Mich. 77: The letterhead used in communicating with the general public as distinguished from the profession should not indicate a specialty, but may show that the attorney is "counsel" or "of counsel" for a law firm. N. Y. Co. 231: The letterhead may make reference to a former government connection, but a specialty may not be mentioned. A.B.A. 159: A statement on a lawyer's letterhead that he is a specialist in "medico-legal" law, to inform persons seeing the letterhead that the lawyer is especially qualified to handle cases where knowledge of medicine and medical jurisprudence is essential such as personal injury cases, is improper advertising." See 14 Calif.; 18 Chicago B. R. 50 (1936).

This was held undesirable both as advertising and as practice of the law by other than natural persons.^{29b}

The foregoing illustration indicates another problem—the identification of the lawyer with a lay organization. Such identification on a letterhead is not favored^{29c} particularly where it amounts to practicing law under a fictitious name.

It appears, however, that the rule regarding the use of letterheads is not entirely rigid. Where a lawyer desires to inform the public of his qualifications for a political post, he may be permitted to use the firm letterhead for the purpose.^{29d}

A law graduate not admitted to practice may not use a letterhead containing words “University Graduate of Law—Notary Public—Legal Papers Drawn.”^{29e}

Newspapers

The use of newspapers by lawyers may be considered in three ways. Newspaper discussion of pending legislation by lawyers is discouraged by Canon #20. The writing of articles giving information upon the law for publication in newspapers is not improper, under Canon #40. But the lawyer “should not accept employment from such publications to advise inquirers in respect to their individual rights”.³⁰ The use of the newspaper to carry the professional card or other advertising of the lawyer is less easily approved.

Local custom at one time seems to have favored the insertion of the lawyer’s card in a newspaper.^{30a} In A.B.A. 69 the Committee said:

At that time (1908) the use of professional cards in the advertising columns of local newspapers in small cities or rural communities had become sanctioned by long usage. In order that there should be no interference with what appeared to be a harmless “local custom”, an exception permitting its continuance was inserted in Canon 27. We have heretofore expressed our opinion that the sanction thus given this “local custom” should not be extended to other publications or other customs. Opinion 24.

^{29b} 16 Los Angeles.

^{29c} N. Y. Co. 358: The letterhead may not include the name of a lay “Licensed Compensation Representative”; 9 Los Angeles: “_____ Guarantee Co.” (Attorney attempted to use a fictitious name); 14 Calif.: Attorney may allow his name on a letterhead of collection agency if the letterhead is properly used. See also 48 Calif. 31 Calif.: Approved if letterhead shows layman is not a lawyer. 26 Los Angeles: “_____ & Co. Attorneys and Counsellors At Law,” disapproved. A.B.A. 253: Attorney may not permit client to serve collection letters on his stationery.

^{29d} Mich. 52: But it is not improper for an attorney to use the firm letterhead to inform the public of his qualifications for a political post sought by him.

^{29e} 38 Los Angeles.

³⁰ A.B.A. Rulings on Canon 40 include #92, 98, 121, 141.

^{30a} 1 Los Angeles; 23 Los Angeles (foreign language newspaper); 22 Los Angeles; 20 Calif. (Classified advertisements); 18 Calif. (Name of attorney—address, Legal advice); 15 Calif.; 13 Calif. (paper of a fraternal order); 4 Calif. (foreign language newspaper); 3 Calif.; Mo. 30 (Publication of a card in a newspaper—county or city); also N. Y. Co. 311; Utah 9; N. Y. 239.

We have also held that whether such a "local custom" exists in any particular community is a matter for determination by the bar association (city, county or state) which functions in that community, unless that community be in a state whose disciplinary authorities have a definite rule on the subject. Opinion 11. Such a custom can only exist in a community where this form of advertising has been a long standing practice which has been followed generally by the entire bar of the community. It is not probable that it exists in any but smaller communities having a very limited bar. It does not seem possible that it could exist in any metropolitan city. If there be any contention to the contrary, the facts can be easily determined by the bar association of the city in which the custom is alleged to exist.

Several other committees have ruled along similar lines.^{30b}

Where the lawyer is not the moving spirit in securing the publication he is still obligated to see that it is not continued.^{30c} In A.B.A. Opinion 62 the Committee says:

We cannot believe that the newspaper's repeated publication of the attorney's picture and announcement could have occurred without his request or consent. But if it be true that such publication has been made as suggested in question one, nevertheless it was the duty of the lawyer as soon as his attention was called thereto to request and require the publisher to discontinue publication of the article. The failure so to do would permit him to be "advertised" by indirection contrary to the provisions of Canon 27.

The rule is not relaxed when the newspaper plans an anniversary or special edition.^{30d} In A.B.A. Opinion 43 the Committee said:

A photograph of a lawyer, accompanied by a statement of his name, address and vocation is not a professional card and its publication (in a special edition) if paid for by the lawyer either directly or indirectly, becomes a solicitation of business by advertising which must be condemned as a violation of Canon 27. The attention of the public is drawn in an unusual manner to the lawyer in connection with his profession. One of the features which distinguishes an advertisement from a news or literary article is the fact that its publication is paid

^{30b} In general it is improper for a lawyer to use a newspaper as a means of advertising. Mich. 33: A lawyer should not use a newspaper as a means of advertising. 21 Calif.: (Name of Attorney—Address, General Practice in State and Federal Courts, Oral advice free). 17 Calif. (Law—Free—Advice—All cases civil and criminal—Fees \$5 to \$50). 16 Calif. (Free—Dependable Law Advice—All Cases—Low fees). A.B.A. 221 (It is unethical for a lawyer to publish a card in an insurance magazine of general circulations holding himself out as an insurance attorney and adjuster.) N. Y. Co. 311; 3 Los Angeles B. B. 14; A.B.A. 270.

^{30c} Okla. 15 (Attorney permits newspaper to publish photograph and occupation); Okla. 74 (Attorney permits newspaper to publish his name under a heading "When you need professional services, see these Firms.")

^{30d} Okla. 92 (Attorney permits picture, name and profession to appear in a newspaper "Anniversary" edition.) 28 Los Angeles—eulogistic remarks about members of the firm. 11 Los Angeles B. B. 331—a journal of a fraternal order. 12 Los Angeles B. B. 398.

for by one receiving the benefit of the publicity and the amount of the payment or what particular item of cost the payment is supposed to cover are immaterial.

For a lawyer to conduct a newspaper column in which answers are given to questions of law is improper for several reasons. Publicity attending the relation of attorney and client is not desirable. The chance of mistake due to the inexpertness of the client in putting the question or in his use of the answer must be kept in mind. But if the lawyer allows his name to appear it is advertising and therefore condemned.^{30e}

Indirect advertising is equally undesirable from an ethical viewpoint.^{30f} In A.B.A. 140 the case involved a newspaper photograph of a lawyer and woman client evidently posed, seated at a table gazing at each other, the client, pen in hand, apparently engaged in writing 'the betrayal story'. The heading to the news story which contained names of attorney and client read "Pens Story of Alleged Betrayal Romance". This was disapproved.

Even when the advertising is disguised in a Christmas greeting^{30g} the action is still unethical.

But the picture is not entirely negative. Certain types of information about a lawyer may be published in a newspaper. It has been held that a newspaper announcement of the opening of a law office is a matter of local custom.³⁰ⁱ A news item secured in the regular course of newspaper reporting may without impropriety contain an attorney's name.^{30j} A news announcement may give credit for the authorship of a feature article in the paper.^{30k} Newspaper advertisements in good faith part of legal work being handled by the lawyer may contain his name.^{30l} The privilege granted by Canon 40 of writing proper articles for publication is reasonably in-

^{30e} N. Y. Co. 203 (Attorney conducts a newspaper column headed "Answers to Law Questions by [name of Attorney]—Attorney at Law.") 33 Los Angeles: A column run by the attorney and containing at the top the words: "J. S. Attorney (Address) has consented to answer through the columns of this paper any and all legal questions free of charge provided the question does not involve matters which should not appear in public print or of too much length to be printed, and in that event, he will answer the same if you will mail him a self addressed stamped envelope. This paper assumes no responsibility as to the correctness of the answers given by the above attorney, or liability as to the opinions rendered through the columns of this paper or direct." Disapproved. 8 Los Angeles (Legal Query Column disapproved). A.B.A. 199; 26 Jour. A.B.A. 233. See A.B.A. 270; L. A. 148.

^{30f} 25 Los Angeles distinguishes a "single kindly write up of the client" from a series. A.B.A. 42 (An attorney may not pose for pictures portraying incidents of a case, nor furnish pictures or material to a newspaper or magazine.) Mich. 48.

^{30g} A.B.A. 107 (Newspaper Christmas greetings signed and paid for by an attorney are improper.)

³⁰ⁱ Mich. 19 (A newspaper announcement of the opening of a law office is a matter of local custom.)

^{30j} But the newspaper is not completely banned as a medium of providing information. Mich. 15 (Attorney's name appears in a news item secured in the regular course of newspaper reporting.)

^{30k} N. Y. Co. 174 (A newspaper announcement gives credit for authorship of a feature article in the paper.)

^{30l} A.B.A. 80 (Attorneys representing non-resident mortgagees in foreclosure proceedings may advertise properties for sale over their own names where efforts to sell such properties are an incidental part of their professional services.)

terpreted^{30m} and where the statement is in a law journal and relates to a matter of current legal interest, the attorney may allow his name to appear.

Related means of reaching the general public are not generally approved. Advertising in a periodical is subject to the same limitations as in a newspaper.³¹ The rule applies to a labor union paper;^{31a} a booklet to contain biographies;^{31b} a motion picture;^{31c} and programs of theatrical or other entertainment features.^{31d}

When the courts have had occasion to pass upon newspaper advertising by lawyers they have emphasized points like the following: the solicitation;^{31e} misrepresentation;^{31f} fraud;^{31g} encouragement of divorce.^{31h}

If the advertisement includes the statement that the attorney has "an income tax, inheritance and gift tax service in his office" it is improper.³¹ⁱ

The Attorney Solicits Specific Persons

Personal solicitation for legal employment may bring the attorney in contact with specific persons rather than with the general public.

The media may be: a letter addressed to lawyers;³¹⁻¹ contact with persons benefited by a decision in litigation undertaken for another;³¹⁻² a speech;³¹⁻³ a notice that he has a layman in his office staff who will "have charge of all collection matters";³¹⁻⁴ an insurance policy with the attorney's name written in;³¹⁻⁵ a runner;³¹⁻⁶ a letterhead containing reference to a so-called specialty;³¹⁻⁷ a newspaper notice representing that the attorney

^{30m} A.B.A. 162 (a) (It is not unethical for an attorney to write articles on legal subjects for magazines or newspapers and the fact that publication is in a trade journal makes no difference.) A.B.A. 158 (It is not unethical for a lawyer to permit his name to be published in a law journal in connection with an account of a legal matter of current interest, in which he is acting as attorney.) L. A. 148.

³¹ Other publicity devices and media are ordinarily regarded as undesirable. The burden appears to rest upon the lawyer to justify his acts. In general it is improper for a lawyer to use a periodical as a means of advertising. Mich. 33 (The general rule is laid down.)

^{31a} Mich. 48 (The attorney permits his name to be used in connection with sensational magazine and newspaper features.)

^{31b} A.B.A. 207 (Lawyers may not properly subscribe \$15 to a booklet to contain their biographies with those of other professional men of their community, where their subscription is a necessary condition of having their names or biographies included in the booklet.)

^{31c} A motion picture (Mich. 58).

^{31d} 20 Chicago. Advertising in programs; Mich. 33.

^{31e} The use of the words "Advice Free". *Barton v. State Bar of Calif.*, 289 P. 818 (1933).

^{31f} Use of Another's Name: *In re Cohen*, 159 N. E. 495 (Mass. 1928).

^{31g} Use of words "Divorces Legally Obtained Quietly": *People v. MacCable*, 32 P. 280 (1893) Colo. *In re Schmitzer*, 112 P. 848 (1911) Nevada.

^{31h} *State v. Crocker*, 217 N. W. 444 (Nebraska).

³¹ⁱ A.B.A. 260.

³¹⁻¹ A.B.A. 1—held improper.

³¹⁻² A.B.A. 5—held improper—A.B.A. 9; A.B.A. 80.

³¹⁻³ A.B.A. 8—A speech to members of a club when a purpose of the meeting is to raise funds for the employment of the attorney. Held improper.

³¹⁻⁴ A.B.A. 54—held improper.

³¹⁻⁵ A.B.A. 137—held improper but see 174.

³¹⁻⁶ A.B.A. 147—held improper.

³¹⁻⁷ A.B.A. 159—held improper; see also A.B.A. 183.

will give free legal advice to members of an organization of which the attorney is counsel;³¹⁻⁸ a direct offer of gratuitous service with expectation of ultimate profit.³¹⁻⁹

If a lawyer writes letters asking the recipient to employ him or even implying a willingness to take all cases, the impropriety of the act is clearly indicated.³¹ Sometimes the invitation is accompanied by inducements to the recipient beyond the expressed willingness to accept employment and this is even more clearly improper.^{31a} If the advertising is indirect or partly concealed, the question becomes one of motive with the burden on the attorney to prove that he did not intend solicitation.^{31b}

There is an exception to the rule in cases where solicitation is justified by personal relationship.^{31c} Whether the existing relationship between

³¹⁻⁸ A.B.A. 162—held improper.

³¹⁻⁹ A.B.A. 169—held improper.

³¹ 12 Los Angeles B.B. 328. Business men in a new locality to which the attorney is moving. 36 Calif. Creditors of a Bankrupt. It is improper for a lawyer to make a direct appeal to his clients for legal business. It is improper for the lawyer to write letters asking for business. (A.B.A. 1) (A.B.A. 4) (Solicitation cannot be justified by local custom. N. Y. Co. 8; N. Y. Co. 14; N. Y. Co. 16; N. Y. Co. 65; N. Y. Co. 69; Mich. 18; Mich. 53; N. Y. Co. 91; N. Y. 244; Okla. 89; N. Y. Co. 45 (implied willingness to take all cases regardless of merits.) See also *In the Matter of Adolph M. Schwarz*, 186 N. Y. S. 535 (1921).

^{31a} It is improper for the lawyer to emphasize indirect appeals for business, special facilities, or inducements. N. Y. Co. 32; Mich. 80; N. Y. 177 (Special discount); N. Y. Co. 278 (attorney for trustee in bankruptcy approaches creditors); 17 Los Angeles: Attorney sends out notices giving name, address; notice, "open two nights a week," and statement he would be pleased to meet his clients, friends and the general public. Supporting this were letters of recommendation of the attorney from persons in city where he had formally practiced. See also A.B.A. 168. N. Y. Co. 335 (attorney offers services in payment of father's debts); Okla. 75 (Federal Land Bank Examiner solicits landowner to quit title); A.B.A. 9 (Volunteering information to presumptive claimants before an International Claims Commission is improper.) A.B.A. 173 (It is improper for a lawyer to search for unknown heirs and solicit employment from them.) A.B.A. 73 (It is improper for an attorney to distribute circulars which contain digests of the lenient divorce laws of the state.) 24 Los Angeles (Attorney writes form letter to people not his clients informing them of the new law.) 12 Los Angeles B.B. 101 (The inducement was to accept the case on a contingent fee basis.) See also *People ex rel. Chicago Bar Assn. v. Ashton*, 180 N.E. 440. 26 Journal A.B.A. 811 (1940).

^{31b} 11 Los Angeles B.B. 220. Here again the recipients of the notice were attorneys. This is improper. 8 Los Angeles B.B. 279. Here the attorney claimed contacts with veterans organizations but the committee was of opinion that this did not amount to "personal relations" with the veterans. 3 Los Angeles. An absent heir should not be solicited. The personal relationship does not extend in this direction. 41 Los Angeles. Here the attorney was counsel for an association and desired to distribute letters to its members. The committee held that the personal relation here is not the personal relation referred to in the canon. 29 Los Angeles. The fact that the letters go to attorneys alone is not enough to bring them within the exception of personal relationship. A.B.A. 8 (It is improper for an attorney to address a meeting of automobile club members where the purpose of the meeting is to raise funds for the employment of the attorney.)

^{31c} It is not improper to make direct contact with prospective clients under special circumstances. N. Y. Co. 126 (Lawyer solicits close relatives who might benefit under provisions of an ancestor's will.) N. Y. Co. 261 (A group of property owners. Each retains the attorney on a common contract.) A.B.A. 7 (Solicitation may be justified by the personal relations between the attorney and the person solicited.) 53 Calif.—Announcement of opening office.

attorney and client is such as to bring cases within the exception rather than the rule is a question which tends to be answered by placing the burden on the lawyer.³² Even if it were not for this situation, one would assume that the ordinarily intelligent practitioner would want to establish personal relations with his clients. After all, his contacts with them are only incidentally in the field of contract or agency. Fundamentally, a condition of status is required for most effective service to the client.

Indirect Advertising

Indirect advertising suggests that the lawyer is working in cooperation with a non-lawyer to produce the desired result. Canon #35 on Intermediaries has a bearing on the subject of indirect advertising, but it is designed to guard against a "lay agency personal or corporate, which intervenes between client and lawyer".

Canon #27 is more specific:

It is equally unprofessional to procure business by indirection through touters of any kind, whether allied real estate firms or trust companies advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer. Indirect advertisement for business by furnishing or inspiring newspaper comments concerning causes in which the lawyer has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the lawyer's positions, and all other like self-laudation, defy the traditions and lower the tone of our high calling, and are intolerable.

³² It is improper for a lawyer indirectly to solicit professional employment from his clients. A.B.A. 111 (An attorney may not solicit employment from strangers who have interests similar to those of unsolicited clients.) A.B.A. 229 (Distribution by a lawyer to his clients of a pamphlet recommending they submit their insurance policies to him for advice violates Canon 27.) The Lawyer's primary purpose is to help his own client. N. Y. Co. 47 e. Even the sending of Christmas cards must be subject to restrictions. Mich. 18 (Must be a personal relation.) Mich. 29 (Local attorneys are bound by local standards even if dealing with foreign clients.) The lawyer makes a direct appeal to individual clients. Once the relationship of attorney and client has been properly established, one would suppose that a more flexible rule would apply. The rulings, however, do not seem to bear out this assumption. Neither direct nor indirect action seems to be approved unless a personal relation exists between the two. It is improper to make an indirect appeal. N. Y. Co. 219 (Attorney writes friends and clients generally of the necessity and advantages of making a will); N. Y. Co. 310 (Attorney suggests client make arrangements through his own attorney.) *Not improper* A.B.A. 168: Attorney who is general counsel of trade association renders opinions upon problems common to all members for distribution among membership. A.B.A. 210. Attorney advises client for whom he has drawn will of changes in law which might defeat testamentary purpose. A.B.A. 213. Attorney advises his old clients of new statutes and decisions. But only his regular clients. But the following is improper: Los Angeles 158 (Attorney addresses Lay Groups with reference to legal questions of common interest). 8 Los Angeles B.B. 279 (1933).

The objectionable cooperator referred to in the present section may be either personal or corporate. To permit such an intermediary to advertise or solicit legal business on behalf of a lawyer is "equally unprofessional" with self advertisement. However, if the lawyer's name appears incidentally in advertising, conducted by the lay agency for its own benefit, the rule is somewhat relaxed.

The devices employed by the cooperator even though disapproved show imagination. He may use a letterhead embodying the client's name³³ on some of its regular advertising material.^{33a} He may write a laudatory letter about the attorney^{33b} or enclose the attorney's card.^{33c} He may circularize his own clients urging them to seek the aid of the attorney.^{33d} He may distribute literature upon which the name of the attorney appears.^{33e} He may be a runner^{33f} or may personally solicit for the attor-

³³ A.B.A. 13—An association of lawyers made up of residents of different states, may not solicit business for its members; A.B.A. 35—a lay collection agency under certain circumstances; A.B.A. 41—a bank under certain circumstances; A.B.A. 147—a runner under the guise of a bail procurer; A.B.A. 192—a former member of a law firm, or a member who has full time public or private employment outside the firm. A.B.A. 31—An attorney may not permit the use of his name on the letterhead of a lay organization which solicits law practice and of which he is general counsel. A.B.A. 35—A credit exchange does a large collection business including suits in lower courts where laymen may practice. The suits are started by lay employees and handled where there is default. If case is contested the attorneys appear and bill the exchange for services in each case. This is held improper under Canon 35. Mo. 36 (The client's name and occupation appear on the client's letterhead. But, *contra*, if the letterhead is used in connection with a substantial purpose unrelated to advertising the lawyer's services.) 13 Los Angeles B.B. 71—Use of client's name on literature is improper if client solicits law business or seeks to add to prestige of client. 8 Los Angeles B.B. 279. 8 Calif.—An attorney may properly represent a collection agency provided he is actually employed in each proceeding for which he is compensated or in which his name is used; but if he is merely compensated for the use of his name it is improper. N. Y. Co. 136 (A collection agency prints name of attorney on letterhead.) A.B.A. 184. 48 Calif. (Attorney's name on letterhead of collection agency approved.) Los Angeles 151.

^{33a} It is improper for the lawyer to allow the intermediary to act. Mich. 55 (Attorney should not permit his name to appear as counsel on letterhead used by C.P.A.) Mo. 18 (The client's advertisements and financial statements contain the attorney's name and profession.) 42 Los Angeles (Advertisement of attorney's name as counsel for a corporation is improper). 6 Calif. (Attorney's name on circulars issued by client inviting public to consult with it and send business to it. Approved unless circulars solicit business for the attorney.) 35 Calif. (Automobile club distributes circulars containing name of attorney as counsel. Not improper per se.) N. Y. Co. 115 (A publicity service advertises the lawyer.) A.B.A. 41 (An attorney may not permit a bank to use his name as a director in advertisements when it advertises its services in drawing wills, etc.) N. Y. Co. 72 (A corporation empowered to perform certain duties by the legislature advertises the names of their counsel as members of the legislature.)

^{33b} N. Y. Co. 4 (The client writes a laudatory letter about the attorney.)

^{33c} N. Y. Co. 49 (The law clerk places the attorney's name on the card circulated by the law clerk.) N. Y. Co. 117 (A father who is a merchant encloses card of his son, an attorney, in announcements.)

^{33d} N. Y. Co. 47 (The collection agency, a client, circularizes creditors urging them to place their claims with the attorney.)

^{33e} N. Y. Co. 370 (A lawyer's service corporation circularizes an announcement of amendment to corporation law proposed by lawyer and places name of attorney in the announcement. Not improper.)

ney.^{33g} Even if such solicitation is conducted without compensation^{33h} it is disapproved. Through the opinions runs the undercurrent of decision based on motive. Most of the devices appear as invitations to employ the attorney and as such are unprofessional.³³ⁱ

Where the motive is to give information rather than to solicit business, an exception is made.^{33j} Also where the attorney is not directly or indirectly interested in the solicitation of claims.^{33k}

One further situation has been covered in the committee rulings—where the attorney organizes the intermediary and uses it for purposes of solicitation or instigates its activities in his own behalf. The form of this intermediary is varied: A club;³⁴ a “Pre-trial Bureau;”^{34a} a collection business;^{34b} a device to procure receivers from trade organizations;^{34c} a business.^{34d} The attorney may prompt the client to solicit employment for him^{34e} or procure his name to be written into insurance policies with a note directing the insured to contact the attorney^{34f} or examine the

^{33f} A.B.A. 147 (An attorney may not employ a runner under the guise of a bail procurer.) 6 Los Angeles B.B. 50—ambulance chasing; but compare 50 Los Angeles and 51 Los Angeles. See also 37 Calif.; 34 Calif.; 33 Calif.; 32 Calif. The subject of ambulance chasing deserves more space than is available here.

^{33g} Mo. 14 (A public insurance adjuster solicits business and requests attorney to handle cases.) Calif. 38 (Attorney recommends bank as executor of will believing it will appoint him as attorney to administer the estate—approved—provided attorney tells client.)

^{33h} N. Y. 147 (The solicitation is conducted without compensation.)

³³ⁱ In the case of *Louisville Bar Assn. v. Hubbard*, 139 S. W. (2d) 773, the court distinguishes between solicitation by a runner and personal solicitation punishing the former. Note, 26 A.B.A. Journal 679 (1940). See also *In re Weinberger*, 20 N. Y. S. (2d) 339. *In re Deady*, 19 N. Y. S. (2d) 785. 25 Jour. A.B.A. 947 (1939).

^{33j} Mo. 19 (Attorney is director of a bank. Bank for its own benefit lists names and professions of all its directors.) N. Y. Co. 47 (VII). (An attorney accepts claims from a collection agency to be prosecuted in bankruptcy proceedings.) N. Y. Co. 47 VIII, a. (A reorganization committee uses a letterhead including the name of the attorney.) N. Y. Co. 331 (An association represented by an attorney solicits members.) N. Y. Co. 359 (A physician on request of patient recommends physician's brother who is a lawyer.) A.B.A. 100 (Names of the counsel of a bond holders committee may be set forth in a notice when the purpose is to give information.)

^{33k} 50 Calif. (Advertises for claims from victims of loan sharks and employs attorney where suit is brought.)

³⁴ It is also improper for the lawyer to instigate the intermediary. N. Y. Co. 225. (An attorney organizes a club and then uses it for advertising purposes.)

^{34a} Mich. 79 (It is improper for an attorney to operate a “Pre-Trial Bureau” under an assumed name to solicit pre-trial work, though the solicitation is confined to the profession.)

^{34b} N. Y. Co. 47(I, a). (If an attorney engages in a collection business he should not solicit business from merchants by letters or solicitors.)

^{34c} N. Y. Co. 322 (Attorney organizes an intermediary to procure receivers from trade organizations.) See also N. Y. Co. 332.

^{34d} Okla. 31 (Attorney uses another business as a cloak for solicitation.)

^{34e} Okla. 61 (Attorney instigates client to solicit business.)

^{34f} A.B.A. 137 (An attorney may not procure his name to be written in auto insurance policies with a direction to the insured to contact the attorney.)

judgment index and docket to suggest persons to whom an appeal may be made.^{34g} But none of these acts are approved.^{34h}

Advertising Gratuitous Services

The foregoing paragraphs have dealt largely with situations where the motive of the lawyer was, or might reasonably be thought to be, in the direction of personal gain. There are instances in which lawyers contend that altruism rather than enlightened self interest is the occasion for their advertising. The general rule is that even under these circumstances the act is improper.

The mere fact that the advertising is couched in such terms as to give the impression that the advertiser is endeavoring to champion the poor and oppressed in no way lessens the impropriety of the act.³⁵

If the medium of publicity is the radio, the answer is the same;^{35a} and also where the newspaper is employed.^{35b} The distributees of such information are also matters of concern. Even though it is sent only to non-profit organizations^{35c} and charitable and welfare organizations^{35d} the conduct is unprofessional.

But again the standard of conduct is not without exceptions. Certain material sent to certain groups of persons who have a special relationship to the attorney is discretionary with him.^{35e}

^{34g} N. Y. Co. 227 (It is improper to solicit employment by means of information by which judgments may be satisfied and this is so even if the approach is made via the attorney of record.)

^{34h} Indirect advertising for divorce cases, 26 Chicago B.R. 33 (1944).

³⁵ Los Angeles 54. It is improper for an attorney in active practice to offer gratuitously to answer questions sent in by the public to the managers of a radio program (Mich. 9). Advertising in daily newspaper of free consultation service is improper (N. Y. Co. 222). A gratuitous distribution of outlines of new laws and amendments is a matter for the sound discretion of the attorney but the classes of distributees should be closely scrutinized (N. Y. Co. 248). It is improper to send an announcement to non-profit organizations of willingness to give legal advice without charge (N. Y. Co. 256). A.B.A. 13 (An association of attorneys, made up of residents of different states, may not solicit business for its members.) A.B.A. 191 (It is improper for a group of lawyers to solicit professional employment at reduced rates by persons unable to pay the usual and ordinary fees for the service through advertisement in local newspapers and through welfare and charitable organizations and through circulars to persons suggested by such organizations.) A.B.A. 188—Attorney renders gratuitous service in return for specific promise to forward business. Improper. Los Angeles 54; N. Y. C. 89; A.B.A. 169.

^{35a} Mich. 9.

^{35b} N. Y. C. 222.

^{35c} N. Y. C. 256.

^{35d} A.B.A. 191 (Solicitation at reduced rates.)

^{35e} N. Y. Co. 248; A.B.A. 162 (b). Here the committee says: "There is no ethical or other valid reason why an attorney may not write articles on legal subjects for magazines and newspapers. The fact that the publication is a trade journal or magazine, makes no difference as to the ethical questions involved. On the other hand, it would be unethical and contrary to the precepts of the Canons for the attorney to allow his name to be carried in the magazine or other publication in the manner indicated in the foregoing statement, as a free legal adviser for the subscribers to the publication."

However, the most significant ruling in this field is ABA 148, delivered in 1935. In this situation the facts are given as follows:

A number of members of the American Bar Association have requested the opinion of the Committee upon the following facts:

An association has been organized under the title of The American Liberty League. One of the adjuncts of that Association consists of a group of lawyers known as the National Lawyers Committee, presently fifty-eight in number and including prominent counsel from various cities and towns throughout the United States. Under date of October 25, 1935, one of these attorneys, in a radio address, while describing the work of the committee which had just published an opinion as to the constitutionality of the National Labor Relations Act, made the following statement:

If and when any American citizen, however humble, is without means to defend his constitutional rights in a court of justice, one or more of these lawyers will, without any compensation from any source, defend the rights of the individual.

The question propounded is whether or not this statement with its implications offends any of the Canons of Ethics of the American Bar Association.

The headnote summarizes the decision:

Freedom of Speech—*Organization by lawyers and expression of their views on public questions, including the validity of legislation, is not unethical.*

Advertising—*Offering publicly to render legal services without charge to citizens who are unable to pay for them is not unethical.*

The reasoning of the Committee on this point is as follows:

It (Canon 27) has to do, moreover, with the effort to obtain remunerative business—the endeavor to increase the lawyer's practice with the end in view of enlarging his income. It certainly was never aimed at a situation such as this, in which a group of lawyers announce that they are willing to devote some of their time and energy to the interests of indigent citizens whose constitutional rights are believed to be infringed.

Nor is there any fair interpretation of Canon 28 which may be said to be offended by this proposal. It will be noted that the offer made in the address is to defend citizens against threatened infringement of their constitutional rights. So far as we are able to anticipate, no substantial increase of litigation is likely to result from the expressed willingness of these men to serve in such capacity. All that they have offered is their experience and skill "if and when any American citizen, however humble, is without means to defend his constitutional rights in a court of justice". The committee is unable to see anything unethical or improper in such a course. Our view finds support in *In re Ades*, 6 Fed. Supp. 467.^{35e-1}

^{35e-1} *In re Ades*, 6 F. Supp. 467 is noted in 8 So. Calif. L. R. 239. The opinion in A.B.A. 148 is noted in 49 U. S. L. R. 505. See 4 Ohio L. R. 16.

In the prohibited group is the sponsoring of an official U. S. Treasury advertisement for the sale of War Bonds where the name of the law firm appears as sponsor. But the individual lawyer without stating his profession or office address may do so.^{35f}

The ethical propriety of a Legal Aid Clinic operated by a law school as a part of legal education has been determined.^{35g}

The development of legal aid societies has been a matter of commendation by the organized bar.^{35h}

The Soliciting Attorney Deals Only with Other Lawyers

In ABA #1 the Committee states:

The Canon (#27) makes no exception as to solicitation from other members of the profession and contains no warrant for regarding such solicitation as differing from or being less improper than similar solicitation addressed to laymen. In the opinion of the Committee such solicitation is improper.^{35h-1}

What is justified in a general sense remains so in particular.

When the attorney desires to solicit brief writing, he finds the rule working against him;³⁵ⁱ and the same is true in asking for the chance to prepare complaints and trial memoranda.^{35j} Miscellaneous activities in this field involve circularizing information of foreign connections,^{35k} offering to solicit business for a foreign lawyer,^{35l} and reciprocal solicitation.^{35m}

^{35f} L. A. 152.

^{35g} 4 Calif. S. B. J. 20; 5 Calif. S. B. J. 367. But see L. A. 145.

^{35h} In A.B.A. 28 the committee said: "It is the committee's opinion that any obligatory fee schedule must necessarily conflict with that independence of thought and action which is necessary to professional existence". In A.B.A. 148 the committee said: "The defense of indigent citizens, without compensation, is carried on throughout the Country by lawyers representing legal aid societies, not only with the approval but with the commendation of those acquainted with the work." In A.B.A. 259 the committee said: "Absent any improper motive we see no ethical impropriety in a lawyer serving the client gratuitously". See also 25 Jour. A.B.A. 61, Bar Associations offer to aid victims of loan sharks. The Standing Committee on Legal Aid Work of the American Bar Association publishes an annual report on the progress of this public service by members of the profession.

^{35h-1} N. Y. Co. 280: It is not improper for a lawyer who has become deaf to notify other members of the profession of his willingness to prepare for them memoranda of law and briefs, avoiding direct solicitation. Mo. 31 (States the general rule. It is improper for a lawyer to solicit law business from a lawyer.) (Also N. Y. Co. 268 and A.B.A. 36.) See also *In re Winthrop*, 237 P. 3 (1925, Wash.).

³⁵ⁱ Okla. 3 (It is unprofessional to advertise brief-making service by circularization, and notice of such service should be restricted to attorneys.) Okla. 22 (It is unprofessional to circularize lawyers advertising brief-writing service.)

^{35j} N. Y. Co. 46 (It is improper to write other lawyers asking to be employed by them preparing complaints and trial memoranda for a contingent fee in negligence actions.)

^{35k} N. Y. Co. 293 (It is improper to circularize lawyers announcing establishment of connections abroad for procuring investigations and information.)

^{35l} N. Y. 341 (It is improper to act as paid solicitor to procure business for a foreign lawyer.)

^{35m} A.B.A. 232 (The canons condemn the solicitation of professional employment from lawyers on a reciprocal basis.)

An advertisement describing the attorney as "almost invincible before a jury" and appearing in the National Reported System was disapproved.³⁵ⁿ

There appears to be no substantial objection to the distribution by an attorney to other lawyers of announcements of opening an office, forming a partnership, and similar routine matters. Occasionally, something out of the ordinary appears on these announcements and it is usually frowned upon.^{35p}

Miscellaneous

A few miscellaneous opinions may be noted. It is not improper for an attorney to endorse a law book.³⁶ He may: execute a specific surety bond;^{36a} receive proxies circularized by a creditors committee;^{36b} communicate with attorneys of record in regard to possible sources of satisfaction of judgment debts.^{36c}

But he may not solicit employment from a person who receives benefit from a decision in litigation undertaken for another.^{36d} If he is an out of state attorney he must comply with local rules if he desires to make known his availability to clients.^{36e}

The Attorney Seeks Or Retires From Fulltime Employment

Where the motive of the attorney is to secure fulltime employment, or, to put it another way, a single client who will consume his entire time rather than a group of clients, the rules as to advertising are somewhat relaxed.

Seeking election or appointment to public office has been held to be something other than the solicitation of professional employment.³⁷

³⁵ⁿ 26 A.B.A. Journal 58 (1940).

^{35p} See A.B.A. 11, 59, 114, 175, 183. But see 119, 152.

³⁶ Mich. 35 (An attorney may permit a publisher to use his endorsement of a law book, so long as he safeguards against language calculated to impress the public with the importance or special nature of the lawyer's practice.)

^{36a} A.B.A. 230 (There is no ethical objection to the execution by a lawyer of a specific surety bond to account for collections to be made by him if such a bond is requested by the client or forwarder. Publicity may not be given to the fact that the lawyer is, or is willing, to be bonded. However, it is improper for a lawyer to execute a general bond to a trustee for the benefit of *any* client or forwarder who *might* send him commercial business and generally to distribute photostatic copies of the bond to those who in response to an inquiry state they were interested in receiving the bond.)

^{36b} N. Y. Co. 47(VI). (An attorney may receive proxies secured through circularization by a creditor's committee.)

^{36c} N. Y. Co. 228 (It is not improper for a lawyer to communicate with attorneys of record in regard to possible sources of satisfaction of judgment debts if such action would benefit attorney's own client who is a judgment creditor.)

^{36d} A.B.A. 5 (Attorney may not solicit employment from a person benefited by a decision in litigation undertaken for another.)

^{36e} N. Y. Co. 354 (If an out of state attorney maintains a local law office, he may announce his availability for consultation on the law of his state giving the name of his firm and his books and his academic connection. He may maintain telephone listing of his firm name and town, but he may not join a local partnership or arrange for a contingent payment of his New York expense.) See A.B.A. 184.

³⁷ A.B.A. 79; A.B.A. 197; A.B.A. 244, overruling 79 N. Y. Co. 333, 373; Mich. 52.

After he succeeds in his efforts and becomes a public official a further problem is presented. If the position he obtains is that of judge his conduct is subject to the Canons of Judicial Ethics. But if he occupies some other position it would seem that his conduct is measured by the same standards that apply to the rest of the bar.^{37a}

Upon his return to active law practice he is in much the same position as when he originally began practice insofar as advertising is concerned.^{37b}

Canon #36 covers "Retirement from Judicial Position or Public Employment" but it deals with handling matters in a private capacity which he previously dealt with in his public position.^{37c}

^{37a} A.B.A. 211 (Members of Advisory Boards should not utilize their official relationship to obtain professional employment.) A.B.A. 192 (A former member of a firm should not recommend habitually the employment of his former firm.)

^{37b} *The lawyer reenters general practice.* N. Y. Co. 178 (Formal notice of return to professional life from government service during the war is proper. But adoption of the suggestion should be left to the individual taste of the lawyer.) A.B.A. 228 (Sending of an announcement card and letter "Formerly with Interstate Commerce Commission" soliciting employment in commission matters constitutes advertising and solicitation. Practice before the Interstate Commerce Commission and the Federal Trade Commission is not a "specialized legal service" within the meaning of Canon 46.) 53 Calif.: Announcement.

^{37c} A.B.A. 192. In A.B.A. 184 the committee said: "But to include therein a statement of the lawyer's experience in and acquaintance with the various departments and agencies of the government, and a laudation of his legal ability, either generally or in a special branch of the law is not only bad taste but ethically improper." In A.B.A. 228 the committee, referring to Canon 46 and Opinions 145, 152, 159, 175, 183 and 194, dealt with an announcement reading in part: "Practitioner before Interstate Commerce Commission, Federal Trade Commission" and said: "Practice before the two commissions is not a 'specialized legal service' within the meaning of the Canon (46) and the letter makes it clear that the sender does not intend to render that service directly and only to lawyers. The announcement and the letter contain improper advertising . . ."

In A.B.A. 264 the problem was announcements of men returning from government services sent to members of the bar and to former clients. The committee said: "This committee has ruled that it is entirely proper, when a member of or an associate of a law firm returns to practice from military or other government service that an announcement be sent out by him or by his firm to clients and members of the bar, stating that he has returned to practice. The committee, however, can see no reason for adding to such a simple announcement the fact that an attorney has been employed by a specified government department, other than to emphasize his special familiarity with the problems of that particular government department and his acquaintance with the personnel therein. The conclusion being that he is unusually well fitted to undertake such professional work involving such government agency."

In Los Angeles 150, the committee cites a rule: "Cards announcing the opening or removal of law offices, the formation of partnerships, changes in firm personnel and the like may be circulated in the usual and customary manner by mail or personal delivery but may not be published in newspapers or other periodicals; repetition of such circulation is not permissible except when further changes of offices or personnel occur."

In Los Angeles 157, the committee indicated the desirability of eliminating the second paragraph from the following notice: "Announcement is made of my return to the private practice of the law where I will engage in a general practice giving especial attention to the law governing insurance and related subjects.

"Fifteen years with major casualty insurance companies locally as counsel, trial attorney, claims supervisor, etc., equips me to render unusually valuable service to members of the Bar desiring association in this highly specialized branch of law." To the same effect, Chicago 46-1; 43-1. A.B.A. 145, 228, 251 (Card announcing the opening or removal of a law office may not contain statements to the effect that a lawyer intends to specialize in certain types of work or before certain tribunals. Calif. 53.

The Bar Association Advertises

While the individual lawyer is limited in his efforts to make known his availability to prospective paying clients, one would assume that a different set of considerations might affect the corresponding activities of a bar association.

The earlier opinions seem to have accepted the principle that what applied to individual members must also be held to cover the group.³⁸ But this may have been because the particular items of publicity receiving attention suggested a motive of personal gain. Later opinions adopted a different approach. In them the information supplied by the Association was of benefit to the public at large and did not involve solicitation of pro-

³⁸ A.B.A. 172 (A local bar association may not with propriety communicate with insurance companies defending litigation in local departments of the county court suggesting the employment of local attorneys in preference to the employment of attorneys resident in the County Seat.) A.B.A. 121 (A local bar association should not sponsor newspaper advertisements which may seem to have the encouragement of litigation for their purpose.) See also 25 Jour. A.B.A. 62 (1939) "Legal Aid Clinics and Such". A.B.A. 169 (23 Jour. A.B.A. 208): It is improper for an attorney to offer his legal services gratuitously to any organization or association with the expectation of ultimately profiting thereby. A.B.A. 188 (24 Jour. A.B.A. 854): It is improper for a lawyer to render gratuitous service in exchange for a specific promise to forward business in the future. A.B.A. 191 (25 Jour. A.B.A. 312): It is improper for a group of lawyers to solicit professional employment at reduced rates by persons unable to pay the usual and ordinary fees for the service. Los Angeles 145. Los Angeles B.B., October 1943, p. 69: "The use (by an individual attorney) of the sign 'Legal Clinic' thus would be unethical for two reasons. Its only purpose plainly would be to solicit clientele for a private practice and of more serious import is the fact that the advertising would be misleading." 6 L.A. B.B. 221 (1931): "It is improper for the bar to finance the publication of a pamphlet to be distributed by lawyers to their clients urging the client to consult the lawyer first. A.B.A. Opinion 121. Bar Association Advertising: "Although the purpose may be entirely altruistic and designed primarily to give aid to the public in making decisions as to 'how and when to consult attorneys', nevertheless the public will not, we apprehend, attribute to a bar association's sponsoring the publication such lofty purposes, but will more likely adopt the implication, which the program suggests, that the principal objective is to secure professional employment for members of the bar association rather than to perform a supposed obligation to aid and instruct the public (Opinion 9).

"The information given may be useful, but its helpfulness, if any, to laymen cannot compensate for the loss in esteem which the profession may suffer if it assumes to volunteer information potentially inspiring legal strife, or which may be considered a subtle method of seeking legal employment.

"Perhaps no valid distinction is to be drawn between newspaper insertions, if they be of the same kind, merely on the ground of payment or non-payment for the space; however, the use of purchased space in periodicals is generally for selfish purposes or personal gain.

"To overcome these natural implications, the articles should not contain pictures or pictorial illustrations of any character; should not be in usual advertising form and should not contain catch phrases, or other features of ordinary advertising matter; should not extol individuals. They should be in the name of the bar association and not in the name of any individual; nor should mention be made of any lawyer.

"The articles in purpose and effect should be for the intelligent guidance of the public and should be free from the suspicion that selfish motives are the dominant purpose.

"The Committee, though not entirely without misgiving, sanctions the method proposed, provided always that the publications be dignified in tone and in strict conformity with the restrictions herein indicated." A.B.A. 260.

fessional employment on behalf of a particular attorney.^{38a} The development of Public Relations Committees of Bar Associations is a significant indication of the change. In 1933 the American Bar Association sponsored a series of radio broadcasts and subsequently approved the activities of a Committee on Public Relations.^{38b} Other State Bar Associations followed the precedent.^{38c} Much of this activity ceased with the advent of the war years.

The group of opinions by which this change in emphasis was accomplished deserves note.^{38d} In Opinion 191, the American Bar Association Committee stated:

Free legal clinics carried on by the organized bar are not ethically objectionable. On the contrary they serve a very worthwhile purpose and should be encouraged.

In Opinion 205 the ABA Committee was called upon to consider the propriety of a Bar Association supported legal service bureau for clients of moderate means. It said:

We are of the opinion that the plan here presented does not fall within the prohibition of the Canon (#27). No solicitation for a particular

^{38a} Mich. 61 (It is proper for the organized bar association to give publicity in discussions in newspapers and over the radio, of preventive legal advice and service, and the general relationship of attorney and client, so long as there is no solicitation of professional employment by or on behalf of a particular attorney.)

^{38b} Rutherford, M. L., "The Influence of the American Bar Association on Public Opinion and Legislation," p. 112 (1937). For an example of the extent of Bar Association interest in the subject of public relations, see the report of the Committee on Public Relations of the American Bar Association, 66 Reports A.B.A., p. 337, adopted p. 155, 156.

^{38c} 45 Report Penna. B.A. 35 (1939).

^{38d} A.B.A. 205 (Where under a plan of a local bar association to provide legal services to persons in low income groups at charges commensurate with their ability to pay through members of a panel selected by and filed with the local bar association, the plan is publicized only to the extent necessary to apprise members of low income groups and semi-public agencies of the methods and means by which the plan is to be carried out in order that such members shall call upon the bar association or be directed to the bar association by semi-public agencies for reference to a member of the panel, and there is no advertisement of the panel except the filing thereof with the bar association and individual references to members of the panel of persons in low income groups needing legal services, there is no violation of Canon 27 inhibiting solicitation of professional employment.) A.B.A. 227 (Canon 27 is applicable to advertising by organized bars. It prohibits the solicitation of professional employment through an organized bar by or on behalf of a particular lawyer through advertising media. Canon 27 does not prohibit the employment of advertising facilities by an organized bar to acquaint the lay public with the desirability of securing legal services promptly when a legal problem arises, and to appraise the public of the maintenance of a Lawyer's Reference Service embracing a plan of low cost legal service, the plan under which it operates and the availability of the service. A plan or project to educate the lay public with respect to the benefits of legal services should be carried on by the organized bar with a purpose to give the layman beneficial information, to enable lawyers as a whole to render better professional services, to prevent controversy and litigation and to enhance the public esteem of the legal profession and should be carried on in a manner in keeping with the dignity and tradition of the profession.) 25 Jour. A.B.A. 62 (1937) A committee of a Bar Association was permitted to offer its services to aid victims of loan sharks. To the same effect, see *Gunnels v. Atlanta Bar Assn.*, Ga. 1940 (12 S.E. (2d) 602) Note 25 Minn. L.R. 788.

lawyer is involved. The dominant purpose of the plan is to provide as an obligation of the profession competent legal services to persons in low income groups at fees within their ability to pay. The plan is to be supervised and directed by the local Bar Association. There is to be no advertisement of the names of the lawyers constituting the panel. The general method and purpose of the plan only is to be advertised.^{38e}

In Opinion 227, the ABA Committee again endorses the idea of a Lawyers Reference Service, provided it is operated on lines which do not give prominence to the individual attorney participating.

A somewhat similar problem was presented with the outbreak of World War II. In Opinion 206 the ABA Committee dealt with the charging of fees to registrants under the Selective Service Act and held:

It seems to our committee that for a member of the second group (the Bar) to refuse needed legal services to a registrant unable to pay, or to exact a charge from one unable to pay, would be unthinkable and would violate the traditions of our profession.^{38f}

In Opinion 259 the ABA Committee dealt generally with costs and charges respecting servicemen and reiterated its position in these words:

The fundamental question seems to be whether a lawyer may render services gratuitously to a client who is able to pay for such services. Absent any improper motive, we see no ethical impropriety in a lawyer serving the client gratuitously. Here, we assume the motive is to contribute to the war effort and improve the morale of the men in the service and their dependents.

While this is not directly under Canon 27, it has a bearing upon the general attitude of lawyers and agencies engaged in free service.

It is obvious that we are here dealing with two principles—a lawyer should not advertise—the convenience of the public requires that it know what community resources are available to help people solve their problems according to law. In a pioneer society there may have been justification for a rule which prohibited competition for employment among members of the legal profession and for the ruling against stirring up litigation. But the progress of civilization has made more difficult the position of the layman in need of legal aid. He must first realize that he has a problem for which the law supplies, at least in part, a remedy. Then he must locate a lawyer who by training and experience is qualified to give him

^{38e} On this same subject, and describing the experiments in Chicago, Los Angeles, and Philadelphia, see: 25 Jour. A.B.A. 727—Low Cost Service Plans of Chicago Bar; 25 Jour. A.B.A. 1034—Neighborhood Law Office Experiment Launched with Some Opposition; 26 Jour. A.B.A. 57—St. Louis Bar Considers Establishment of Legal Reference Bureau; 21 Chicago B.R. 406; 16 Bul. S.B.A. of Wis., p. 74; 15 Los Angeles B.B. #10, June, 1946.

^{38f} Legal Assistance to Soldiers and Dependents, 16 Bul. S.B.A. of Wis., Feb., 1943, p. 9. See A.B.A. 211.

^{38g} "Shall the Bar Advertise?"—13 Los Angeles B.B. 362 (1937).

standard service in the particular field of law in which the solution to his problem lies. The ethical propriety of a rule prohibiting publicity by the individual lawyer would seem to be well settled. But there are persuasive reasons why the bar association, absent improper motive, may adopt a more elastic regulation as to their own advertising. During the 1930's, many new laws covering unauthorized practice of the law were enacted giving the members of the legal profession broader and more exclusive rights to practice law. With those rights it may well be that there are correlative obligations to be exercised not only by the individual lawyer, but by the bar association in acquainting an often bewildered public with the importance of securing standard justice according to law.

The Lawyer Engages in a Business or a Specialty

When a lawyer engages in business, it is customary to apply to him and his actions the ethical standards of the lawyer.

The rule is to hold the lawyer to the standards of professional conduct.³⁹ He may not use the business as a means of attracting professional employment to himself.^{39a} It is essential that a distinction be maintained

³⁹ *A lawyer may engage in another business under certain limitations.* N. Y. Co. 179 (An attorney may engage in active business while practicing law, but the business must not be allowed to deal in his services as a lawyer or cause the lawyer to depart from standards of conduct required of him as a lawyer.) N. Y. Co. 332 (A lawyer in trade mark practice, which is open to laymen, must conform to professional standards.) A.B.A. 203 (A lawyer who is a registered patent attorney and confines his practice to the patent office is governed by the Canons of Ethics even though the regulations promulgated by the Commissioner of Patents prescribe less stringent standards for registered attorneys.) A.B.A. 152 (A lawyer who is also a licensed patent attorney may not solicit employment by circulars or interviews not warranted by personal relations.)

^{39a} N. Y. Co. 368 (A lawyer may engage in bail bond business if the corporation is not used by the lawyer to solicit business.) Okla. 74 (An attorney engaging in other business must not use it to solicit business for himself as an attorney. Neither should he use his position as attorney to solicit for the other business.) Los Angeles 142. (A practicing lawyer may not solicit employment as an insurance broker.) N. Y. Co. 114 (A lawyer may advertise his loan-brokerage and real-estate business, so long as his character as a lawyer is not associated with the advertising.) A.B.A. 35 (It is improper for an attorney to solicit business indirectly through a lay collection agency.) *Attorney in other business.* Los Angeles Opinion 142: "It is improper for a lawyer to engage in any business that furnishes its patrons with services which would be professional services if rendered by an attorney. In Opinion 84, we had occasion to apply this principle and there held that the services rendered by a motion picture and theatrical agency business would constitute professional services if performed by a lawyer, and accordingly that an attorney could not properly engage in that business, even if he conducted it in a place entirely removed from his law offices. We think the services customarily rendered by an insurance broker must be classified as legal services, if performed by an attorney. Of necessity an insurance broker has to examine insurance contracts and determine whether they afford the coverage his client requires. If a loss occurs, it is the function of the broker to assist in adjusting the claim of the assured against the insurance carrier. In the case of a life insurance or annuity contract, the broker invariably considers and advises his client as to the income and succession tax liability which may be precipitated upon the maturity of the contract. Manifestly, if a lawyer were engaged to render services of this character his employment would be professional." Michigan Opinion 39: "It is improper for an attorney to operate a retail credit bureau as an adjunct to his legal practice, inasmuch as the carrying on of this work is so closely allied to the practice of law

between himself as a lawyer and himself as a businessman.^{39b}

As to advertising a specialty, Canon #46 covers the ground: the test usually applied is "the extent to which such service is available from members of the bar in the community in which the lawyer is practicing."^{39d}

Where the lawyer engages in a specialty, two canons apply. Canon 45 provides: "The Canons of the American Bar Association apply to all branches of the legal profession; specialists in particular branches are not to be considered as exempt from the application of these principles."^{39c}

as to amount to carrying on a law business or a part of a law business under an assumed name and, in effect, would amount to solicitation of business by an attorney." Michigan Opinion 79: "A practicing lawyer who handles law business received from a pre-trial bureau who solicits a variety of pre-trial work and which is operated by him under an assumed name—would be violating Canon 27 even though such solicitation by the Bureau is confined to lawyers only." See Philadelphia 3.

^{39b} N. Y. Co. 266 (A lawyer may organize a club to discuss new developments in the law and invite lay groups to moot court meetings.) N. Y. Co. 238 (It is not improper without more for a lawyer to own shares in a collection agency.) The distinction between the business and the law practice must be maintained. A.B.A. 234 (Advertising by an "Income Tax Service" Association (consisting of a practicing lawyer and a layman sharing the same offices) soliciting employment for the making out of income tax returns constitutes solicitation of professional employment contrary to Canon 27 even though the lawyer's name does not appear in connection with such advertising and nothing is stated indicating that legal services are available.) A.B.A. 225 (It is unethical for a practicing lawyer to participate in the collection activities or the management of a collection agency which solicits business. It is unethical for a practicing lawyer who owns, or had a financial interest in a collection agency, to accept employment as attorney in connection with any claim handled by the agency. It is not unethical for a practicing lawyer to own or have a financial interest in a collection agency the business of which is legally conducted provided the lawyer does not participate in the conduct of the business in any manner, does not allow his name to be used in the business and nothing is done to create the impression that the agency enjoys the benefit of the lawyer's advice and professional responsibility.) A.B.A. 96 (An attorney may accept employment to represent insurance companies even though such employment is tendered by a corporation which solicits insurance claim adjustment business.) Los Angeles 146 (Attorney signs letters as executive of client's company. Not improper.) 7 Los Angeles B. B. 13. (An attorney advertises as acting in the capacity of executor but does not refer to fact that he is attorney—improper.) A.B.A. 234 (Sharing offices with a layman and advertising as "Income Tax Service" is improper.)

^{39c} *It is improper for an attorney to advertise a specialty.* Mo. 24 (Attorney advertises as an "expert fire insurance adjuster.") N. Y. Co. 266 (Attorney advertises that he negotiates business loans.) N. Y. Co. 288 (Attorney advertises that he manages several apartment houses and renders legal services incidental thereto.) Okla. 4 (Attorney solicits collection business.) N. Y. Co. 367 (A lawyer solicits lecture engagements on special phases of the law.) N. Y. Co. 234 (A quiz course instructor employs runners to procure pupils.) Chicago 44-2 (Advertisement reads: "Dependable Income Tax Service Rendered by Attorneys John Doe and Richard Roe and by X, Y and Z. Phone for evening, Saturday or Sunday appointments. The John Jones Real Estate Company, (Address, Telephone)". N. Y. 58. Permits patent attorneys to advertise if they do not describe themselves as attorneys or counsellors at law. 44 Los Angeles. Recognizes local custom. 43 Calif. (Letterhead contains words "Specialist in Negotiable Instruments"—approved.) A.B.A. 116 disapproves publishing a card in an insurance magazine. A.B.A. 120 disapproves a circular soliciting Mexican divorces. A.B.A. 183 disapproves statement of specialization in "Medical Jurisprudence" when a doctor is also a lawyer. A.B.A. 152. Patent lawyers are not exempt from the Canons. A.B.A. 203 to same effect.

Canon 46 limits the distribution of a notice of specialized service to "lawyers desiring to obtain such service."^{39d}

In ABA 145 the Committee disapproved a card containing the following:

Name
College degrees
Attorney at law
Street address
City and State
Telephone number

Specialization in Legal Research—Preparation of Cases for Trial and Appeal—Trial and Appellate Briefing—Rendition of Written Opinions.

The Committee commented: "all of the services listed in the above advertisement are rendered by every general practitioner. In fact, practically the whole field of the practice of law, except for court appearances, is covered."

Among the improper notices are: "insurance attorney and adjuster";^{39e} "bankruptcy counsel" and "Workmen's Compensation Counsel";^{39f} "practice before the Interstate Commerce Commission and Federal Trade Commission."^{39g}

The suggestion is made here again that the convenience of the client may require some more definite designation of the abilities of the lawyer than is allowed under the foregoing rule. Few members of the bar are equally effective in all fields of law and there is a chance that the client may be misled by absence of indicia.

The Reason Behind the Rules

The fundamental reason behind the rules against publicity by lawyers as given in the opinions of Bar Association Committees appears to be the "essential dignity of the profession."⁴⁰ But this idea is amplified in a number of opinions.^{40a} The courts also have expressed themselves upon

^{39d} A.B.A. 36, 114, 116, 120, 141, 145, 159, 183, 194, 203, 228, 251. See 24 Jour. A.B.A. 1017; 26 Jour. A.B.A. 811 (Letter to 600 clients and friends).

^{39e} A.B.A. 221.

^{39f} Mich. 77.

^{39g} A.B.A. 228.

⁴⁰ From the Opinions of the Committee on Ethics and Grievances of the American Bar Association: Opinion 1—"The Essential Dignity of the Profession"; Opinion 8—"The Essential Dignity of the Profession"; Opinion 9—"Unbecoming"; Opinion 11—"Beneath the Essential Dignity of the Profession".

^{40a} Opinion 11—"Not compatible with the self respect and best interests of the profession".

the matter^{40b} emphasizing the undesirability of "modern advertising business methods", "self laudation", "commercial methods", "bargain counter methods", "personal gain."

A fair statement is found in A.B.A. Opinion 111:

From earliest times, both in England and in America, solicitation of employment by lawyers has been considered beneath the essential dignity of the profession. It has not been claimed that there is anything wrong or inherently improper in such conduct. But it has been believed that it is not compatible with the self respect and best interests of the profession.

The most obvious exception to the rules appears to arise when the motive behind the advertisement is the convenience of the public. But the committees are reluctant to apply the exception. Perhaps as good a statement as any is contained in ABA 179 where the safeguards surrounding such activity, if it is to be justified, are set down:

That it would be wise in the majority of cases for a person, who contemplates the giving or receiving of a conveyance, the execution of a contract, the execution of a declaration of trust, the drafting and executing of a will, the disposition of property when taxes on the transfer are involved, or taking action with respect to other like matters, to employ a lawyer in advance of acting must be admitted.

The employment of a lawyer to protect the client's rights, advance his interests, comply with necessary legal requirements, keep within legal inhibitions, and prevent future controversy and litigation, rather than to employ a lawyer after trouble has ensued, benefits the client rather than the lawyer because the remuneration of the lawyer is generally greater from the latter than the former service. A lawyer receives much less compensation for seeing that a will is properly drafted and executed than for defending a hotly contested will case.

^{40b} See Opinion 73. In *In re Schwartz*, 175 App. Div. 335 (N. Y.) at 342: "They" (the advertisements) are typical of modern advertising business methods and would be appropriate to the exploitation of patent medicines or other proprietary articles, are utterly abhorrent to professional notions or standards." *In re Schwartz*, 231 N. Y. 642, in the dissenting opinion, Judge Pound said: "The profession has ever discountenanced as undignified and indecorous the conduct of the lawyer who blatantly advertises for business as those engaged in trade may do without exciting unfavorable criticism. Attorneys are officers belonging to the courts and subject to their control and discipline (*Matter of Cooper*, 22 N. Y. 67). Advertising or soliciting business is censurable as a form of self laudation unbecoming the traditions of a high calling." *In re Cohen*, 261 Mass. 484: "It is incompatible with the maintenance of correct professional standards to employ commercial methods of attracting patronage." See also *In re Donovan*, 43 S.D. 98; *In re Morrison*, 43 S.D. 188; *In re Cliensis*, 26 Pa. Dist. Rep. 853: "That the profession of the law should adopt bargain counter methods for obtaining business is intolerable." See also *People v. McCabe*, 18 Col. 186; *In re Schnitzer*, 33 Nev. 581: "An attorney who, for the purposes of personal gain, seeks to make the courts of this state a clearing house for the domestic woes, real or imaginary, of the country at large, is certainly guilty of misconduct." See also *People v. Taylor*, 32 Colo. 259; *People v. Goodrich*, 79 Ill. 148; *People v. Smith*, 200 Ill. 442; *Bar Assn. v. Scouler*, 34 Nev. 313; *Re Biaggi*, 172 Pac. 1130.

We recognize the distinction between teaching the lay public the importance of securing legal services preventive in character and the solicitation of professional employment by or for a particular lawyer. The former tends to promote the public interest and enhance the public estimation of the profession. The latter is calculated to injure the public and degrade the profession.

In carrying out a project to educate the lay public with respect to the benefits of preventive legal services, certain possible evils should be carefully guarded against.

First, it should be carried on by the organized bar in order that any semblance of personal solicitation will be avoided.

Second, that the purpose is to give the laymen beneficial information to enable lawyers as a whole to render a better professional service, to promote order in society, to prevent controversy and litigation, and to enhance the public esteem of the legal profession, the judicial process, and the judicial establishments should be made plain.

Third, it must in fact be motivated by a desire to benefit the lay public and carried out in such a way as to avoid the impression that it is activated by selfish desire to increase professional employment; and any plan, however well intended, that on trial fails to convince the lay public that the purpose is to benefit the layman, and not to promote professional employment, should be abandoned.

Fourth, it should be carried on in a manner in keeping with the dignity and traditions of the profession. See Opinion 121.

But this listing of reasons does not tell the whole story. Objection is made to publicity material because it misrepresents,^{40c} because the actions of the lawyer amounted to solicitation.^{40d} The language of the material may be unsatisfactory.^{40e} Local custom does not always supply a justification.^{40f} Nor is there a duty upon the individual lawyer to inform the public.^{40g}

^{40c} Opinion 32: "The words 'Counselors in Patent Causes' imply that the persons using them are entitled to prosecute cases in the courts, so that their use by a layman is a misrepresentation." Opinion 141: "This case is not comparable to that which was considered in Opinion 140. In that case a lawyer posed with his client for a picture he knew was to be used in connection with a sensational newspaper story concerning a case the lawyer was handling; that was clearly solicitation and of a reprehensible nature."

^{40d} Opinion 9: "The contention that there is any duty upon a lawyer, in any branch of the law, to furnish presumptive clients or litigants with whom he has had no previous personal or professional relations which would justify such action, information as to how and when their claims must be presented is untenable."

^{40e} Opinion 7: "(The Committee) is of the opinion, however, that the language of the circular is not entirely free from criticism."

^{40f} Opinion 4: "The Committee is further of the opinion that the use of the circular letter is not justified by the custom alleged to prevail in Washington in practice before the departments, and that if any such custom exists it is itself to be condemned as contrary to proper standards of professional conduct." One comes to believe that misrepresentation, the best interests of the profession, avoidance of the sensational, the choice of language, the presence of local custom, and similar factors may affect a decision.

^{40g} Opinion 13: "It may be argued that it (a title examiner's association) fills a need and renders a service in bringing the qualifications of the attorney to the attention of the client. But this argument could be applied to many other forms of offering useful legal services which are condemned by Canon 27 as soliciting employment."

The rules do not apply in some cases because of the motive behind the publication. Incidental advertising, where another object is clearly the main one, is often justified.^{40b}

Another exception to the rule relates to situations where the motive of the attorney is to render gratuitous service. The burden, of course, rests with the attorney to show that his motive is altruistic. In the absence of a voluntary agreement to maintain a minimum fee schedule, there appears to be no obligation requiring a lawyer to charge any particular amount. And any compulsory fee schedule would appear to be an improper regulation of the right of the individual attorney and client to work out their personal contractual relations (ABA Opinion 28).

The first person to come under this exception is the individual lawyer who has an urge to contribute to the welfare of his community.

Consider the following statements from Opinion 148:

The defense of indigent citizens, without compensation, is carried on throughout the country by lawyers representing legal aid societies, not only with the approval, but with the commendation of those acquainted with the work. Not infrequently services are rendered out of sympathy or for other philanthropic reasons, by individual lawyers who do not represent legal aid societies. There is nothing whatever in the Canons to prevent a lawyer from performing such an act, nor should there be. Such work is analogous to that of the surgeon who daily operates in the wards of the hospitals upon patients free of charge—a work which is one of the glories of the profession. Or the later one from the same opinion referring to Canons 27 and 28: In the opinion of the Committee, this proffer of service, even when broadcast over the radio, or tendered through the circulation of printed matter to the general public, offends neither of these canons. The canon prescribing the solicitation of business is aimed at commercialization of the profession. It announces the principle that the practice of the law is a profession and not a trade, and that the effort to obtain clients by advertisement is beneath the dignity of the self-respecting lawyer. It has to do, moreover, with the effort to obtain remunerative business—the endeavor to increase the lawyer's practice with the end in view of enlarging his income. It certainly was never aimed at a situation such as this in which a group of lawyers announce that they are willing to devote some of their time and energy to the interests of

^{40b} This in Opinion 96: An attorney may accept employment to represent insurance companies even though such employment is tendered by a corporation which solicits insurance claim adjustment business. Opinion 100: Names of the counsel of a bondholders committee may be set forth in a notice when the purpose is to give information. Opinion 158: "It is not unethical for a lawyer to permit his name to be published in a law journal in connection with an account of a legal matter of current interest, in which he is acting as attorney." Opinion 174: "The direction on the (insurance) policy (containing the name of the attorney for the company) serves a necessary and legitimate purpose. It is almost essential that the insurance company's representative conduct immediate investigation at the scene of the accident and ascertain facts . . ." "Opinion 137 is clearly distinguishable. There an intermediary agency selected a list of local counsel and furnished it to the insurance companies . . . The attorney paid a consideration for inclusion in the list." Los Angeles 152 (individual lawyer without stating profession or office address sponsors sale of war bonds).

indigent citizens whose constitutional rights are believed to be infringed.

The Legal Aid Society is also within the spirit of this exception. It functions in the service of those clients not able to pay a fee. The legal aid movement has received the approval of bench and bar.⁴¹ In the larger cities it may be regarded as the practical way for the community to care for a pressing problem.^{41a}

The Legal Service Bureau, while more recent than the Legal Aid Society, and designed to serve a group in the community having more money, has received attention. Insofar as the work is attempted by individual lawyers, it has had to contend with the scepticism of the bar toward motive. But when it is supported by the organized bar, and directs attention to no particular lawyer, it receives approval.

The Legal Service Bureau may turn out to be an answer to the need for some means to distinguish among members of the profession those best qualified to serve clients in a particular field.

Conclusion

A new series of canons of ethics relating specifically to the ethical responsibilities of bar associations might well be adopted. The present categories are aimed at the activities of the individual lawyer and the judge. The bar association, whether voluntary or inclusive, is a distinct entity. It deserves to have the accumulated experience of the profession crystallized for its guidance in a separate set of rules and dignified by name.

Among the topics which might be developed into canons in such a compilation, three deserve immediate comment:

1. The persons or groups to which a bar association owes obligations might be made clearer. The obligations of the *lawyer* are said to extend to his client, the court, the profession, and the community, perhaps in the order named.^{41b} The *judge* has a duty to "the state and its inhabitants, the litigants before him, the principles of law, the practitioners of law in his court, and the witnesses, jurors and attendants who aid him in the administration of its functions."^{41c}

In similar fashion one might explore the relationship of the bar association—to its own members, to the bar in general who may not be members, to the court, to the public, and perhaps to others.

One might go further and clarify—or even extend—the nature of the obligations to each of the groups. What sorts of services should a bar association as a minimum render its members; what should be its re-

⁴¹ The Standing Committee on Legal Aid Work of the American Bar Association presents an annual report.

^{41a} For a description of the development of the New York Legal Aid Society, see J. M. Maguire "The Lance of Justice"—Harvard University Press 1928.

^{41b} Warvelle "Essays in Legal Ethics", p. 21, Callaghan & Co. (1920) (2d ed.).

^{41c} Judicial Canon #1.

sponsibilities to the courts; for the development of the law and the improvement of the administration of justice; for the general public? One would start, of course, from the purpose clauses of the constitutions of bar associations. But the task would be to map out: the area of activities, the type of problems for solution, the resources to be used or developed by a bar association which feels the value in justifying to itself its continued existence; the inspiration of such a program to the members; the opportunity offered younger men coming into the bar continually to make a professional contribution of time, effort and skill. The reaction on the part of the general public should be worth the not inconsiderable time and trouble necessarily involved in making such a survey.

The following text of such a canon is suggested solely for purposes of discussion:

1. A local bar association in a county, city or district, by the very fact of its organization and existence, owes a duty to: its own members, the clients and prospective clients in the area served by its members, the courts and administrative tribunals before which its members practice, the general public whether clients or not, and the state of which its numbers are quasi-public officials.

A state bar association might have similar duties on a state level.

2. Another canon might well be devoted to a division of responsibility in the matter of advertising the profession. A bar association has contacts with the court on the one hand and with individual members of the profession on the other. If the bar association is to be the mouthpiece of the profession and perhaps, incidentally, of the judicial department of government, close cooperation with the judiciary would seem important.

The following text is submitted solely for purposes of discussion:

Each bar association shall have the responsibility both of informing the public regarding the legal profession and supervising the advertising of its individual members. Final responsibility for approving advertising policies and disciplining those who violate them shall rest with the court.

3. A third canon in this field might relate to administrative detail. It could define the types of approved publicity and the channels through which it might be made available. If the bar association is to tell the public about its work standards of propriety, topics, media of publicity, all deserve considered attention. The following text is submitted solely for purposes of discussion:

All bar association advertising and publicity should be of a quality to improve the public prestige of the profession. In character it should be accurate, dignified, objective, considered. A bar association may make use of newspapers, books, publications, the radio, the lecture platform, and other media to bring its message to the public.

It is all very well to curb the exhibitionistic lawyer whose sense of propriety is not too nice. The practitioner whose self interest is unenlightened may become a nuisance, if not a menace. But to assume in the modern world of extensive public relations campaigns that the value of the legal profession without more will be recognized above the din of competing clamors, is not too realistic. It is only by a long process of education that a lay public comes to realize that it is better to see the lawyer before than afterwards. While the problem of advertising by individual lawyers is well on its way to solution, the need for bar association "publicity" on a dignified basis consistent with the high standards of conduct of the profession, calls for further effort.