

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

QUESTION

A lawyer who is the counsel to a trade association has been requested to submit articles discussing matters of law pertaining to the industry for inclusion in the association's monthly bulletin. This bulletin is distributed, without charge, to the members of the association and others interested in the industry who are on the association's mailing list. The articles would appear over the lawyer's name. He asks whether there would be any ethical objection.

OPINION

It is the Committee's opinion that the proposed practice would not be improper provided that the articles contain only general information and do not attempt to answer specific questions submitted by members of the association seeking legal advice relating to their own affairs. Identification of the lawyer should be limited to the fact that he is a lawyer and a member of the Bar and counsel to the association.

Canon 40, provides in part: "A lawyer may with propriety write articles for publications in which he gives information upon the law." An attorney so doing does not violate the provisions of Canon 35 which state that the relations between a lawyer and those to whom he gives legal advice should be direct and personal and that this service must not be exploited by an intervening lay agency. Also, the practice would not violate Canon 27 which prohibits solicitation or advertising if the articles are of a general nature. See Opinion No. 92 of the American Bar Association.

Opinion No. 804 of The Association of the Bar of the City of New York, dated May 2, 1955, approved the publication and dissemination of a statement prepared by a lawyer who was counsel to a trade association concerning the import and effect of a court decision of interest to the industry and the members of the association. The Committee stated, however, that care should be exercised to avoid having the statement contain anything that could be interpreted either as giving advice to members of the association in respect to their individual affairs or as indirect advertising.

Informal Decision No. 538 of the American Bar Association holds that it is not improper for the legal advisor of a fraternal organization to contribute articles of a general nature on practical questions of law to the organization's publication.

Opinion #67 - 1/8/68 (29-67)

Topic: Advertising.
Newspaper Publicity.

Digest: Lawyer may not arrange newspaper publicity for client where lawyer's name or picture would also appear.

Canon: Former Canons 20, 27

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An attorney inquires whether there is any ethical objection to his arranging, either on his own initiative or at the request of his client, for newspaper publicity in connection with a matter in which he is involved as counsel, which publicity includes the attorney's name and picture. He also asks whether he may ethically permit his picture to be taken when he knows it will be used by the newspaper together with his name in connection with a story concerning a legal matter in which he is involved.

OPINION

It is the Committee's opinion that an attorney is prohibited from arranging newspaper publicity which includes the attorney's name or picture in connection with matters in which he is involved as counsel, even in cases where the publicity is arranged at the request of his client. Such conduct results in the indirect advertising prohibited by Canon 27, which provides in part that:

"Indirect advertisements for professional employment such as furnishing or inspiring newspaper comments, or procuring his photograph to be published in connection with causes in which the lawyer has been or is engaged...offend the traditions and lower the tone of our profession and are reprehensible..."

It is not improper for an attorney's name and picture to appear in a newspaper as a normal incident to a news event in which he is involved but an attorney cannot ethically promote, inspire or encourage such publicity. The American Bar Association in Opinion No. 140 answering an inquiry involving the publication in a local newspaper of what it termed an "evidently posed picture" of an attorney and his client with an accompanying story, noted that:

"It is highly improbable that this picture was taken, or that it was used, without the consent of the attorney. Assuming his consent, the committee unhesitatingly condemns the attorney for improper solicitation."

In Opinion No. 42, the same Committee held that it was improper for an attorney to pose for a picture to be used in conjunction with a newspaper article concerning a divorce proceeding in which he was involved even where the court acquiesced in the conduct. In Opinion No. 62, the same Committee held that where an attorney's picture and an announcement of his practice in the city were published repeatedly by the newspaper, the attorney has the duty of requesting and requiring the newspaper to discontinue the publication even if originally done by the newspaper without his consent or encouragement.

See also Canon 20 relating to litigated matters.