

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

OPINION

Such conduct is unethical and a violation of Canon 27. (ABA Inf. C-479 and ABA Inf. 546.)

As stated in Matter of Connolly, etc., 18 App. Div. 2d 466, 478; 240 N.Y.S. 2d 126, 138:

"We agree, however, that, where a newsworthy or public interest article, published in a newspaper or magazine, is in good taste, a charge of a violation of canon 27 is not necessarily made out merely by proof of a lawyer's co-operation in the publication therein of certain of his activities or achievements....

"Broadly speaking the question is said to be one of professional good faith and good taste.....There can be no justification for the participation and acquiescence by an attorney in the development and publication of an article which, on its face, plainly amounts to a self-interest and unethical presentation of his achievements and capabilities."

In this case the attorney was only one of many lawyers who attended the conference and singling him out for special attention was clearly an attempt to promote him as an attorney knowledgeable in a particular field of law. An attorney cannot ethically promote, inspire or encourage such publicity. (N.Y.State 67.)

Opinion #101 - 5/2/69 (7-69)

Harmonized by #101(a)

Topic: Direct communication with
adverse party
Digest: Direct communication with
bankrupt by lawyer trustee
in bankruptcy is improper
Canon: Former Canon 9

QUESTION

May an attorney who has been appointed a Trustee in bankruptcy communicate directly with the bankrupt concerning his assets, or must he communicate only with the bankrupt's attorney?

OPINION

Canon 9 provides: "A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel."

A Trustee in bankruptcy represents the creditors and is necessarily a party adverse to the bankrupt. Accordingly, it is improper for a Trustee who is an attorney to bypass the attorney for the bankrupt.