

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

If the discussion was with one of the attorney's former partners, the attorney is likewise foreclosed from acting. See DR 5-105 (D).

Opinion #157 - 10/9/70 (31-70)

Topic: Alumni Bulletin Article
Featuring Law Firm.

Digest: Propriety of alumni bulletin
article featuring law firm
and of firm members
participation depends on meeting
proper standards.

Code*: DR 2-101 (A); 2-101 (B)

Former Canon: 27

QUESTIONS

1. May a law school alumni bulletin publish an article of historical interest about a historically prominent small law firm with which members of the same family have practiced for several generations?

2. May an alumnus partner of such a firm cooperate in the preparation of the article?

OPINION

The Code of Professional Responsibility governs members of the bar only. A law school alumni magazine, however, has a special obligation to see that its articles and news reporting are in good taste and do not violate professional standards. Thus it would be inappropriate for the magazine to publish any article lacking in dignity, or which contains self-laudatory statements calculated to attract the lay public, or which appears to promote the practice of a specific firm. Nor should material be included, the publication of which a member of the bar would have a professional obligation to discourage. See N.Y. City 806 (1955). The magazine may, however, include material of historical or current news interest which meets these standards. Cf. N.Y. City 615 (1942).

The Code of Professional Responsibility specifically condemns any form of participation by a lawyer in the publication of professionally self-laudatory statements.

DR 2-101 (A) provides:

A lawyer shall not prepare, cause to be prepared, use, or participate in the use of, any form of public communication that contains professionally self-laudatory statements calculated to attract lay clients . . .

DR 2-101 (B) provides:

A lawyer shall not publicize himself, his partner, or associate as a lawyer through newspaper or magazine advertisements, . . . or other means of commercial publicity, nor shall he authorize or permit others to do so in his behalf. . .

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These provisions of the Code carry forward the widely accepted standards of former Canon 27 prohibiting "furnishing or inspiring newspaper comments . . . and all other . . . self-laudation". Nevertheless, not all cooperation with the press is forbidden.

The leading case under the Former Canons involving members of a law firm charged with improper participation in the preparation of an article about the firm is Matter of Connelly, 18 App. Div. 2d 466, 478, 240 N.Y.S. 2d 126, 138 (1st Dept. 1963), where the court stated:

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 self-interest and unethical presentation of his achievements and capabilities.

In the Connelly case, the court did not prohibit the furnishing of all material, but rather only that which is self-laudatory or otherwise violative of traditional standards, stating (18 App. Div. 2d at 478, 240 N.Y.S. 2d at 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 cooperation in the publication therein of certain of his activities or achievements. (See State of Florida ex rel. The Florida Bar v. Nichols, supra.) As pointed out in Opinion No. 806 rendered by the Committee on Professional Ethics of the Association of the Bar of the City of New York on May 2, 1955: "the press and the public has a proper and legitimate interest in newsworthy incidents in the career and activities of a lawyer". But therein the attorney is also warned that "[h]e may not properly encourage laudatory statements in newspapers and magazines as to his professional attainments or collaborate in their preparation", and that "[i]t would be the duty of a lawyer to discourage the publication of an article where he knew in advance that it was sensational or undignified, or might be construed as advertising, and he should give no aid in its preparation".

The same principles continue to apply under the new Code.

Examples of published articles considered improper are the following:

ABA 42 (1931), ABA 62 (1932), ABA 140 (1935), ABA Inf. 479 (1961), ABA Inf. 546 (1962), ABA Inf. 552 (1962), ABA Inf. 854 (1965), N.Y. State 67 (1968), N.Y. State 100 (1969), N.Y. State 119 (1969).

ABA Inf. 552 (1962) recognizes that former Canon 27 did not prohibit a lawyer "in all cases from furnishing information about himself to a newspaper which may be the basis for some article about him". See also ABA Inf. 854 (1965).

N.Y. City 806 (1955) states:

. . . a lawyer may with propriety answer questions and volunteer personal or professional nonprivileged data in connection with the preparation of . . . an article regarding his career, so long as he insists that the article be dignified and in good taste and be written in such a tone

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as not to imply to the public that it is intended to constitute advertisement for professional employment. He should see to it, so far as possible, that the article as published carries out his instructions . . .

* * * *

A lawyer may properly review an article submitted in advance of publication, and he should not only correct any inaccuracies but should insist upon the elimination of material not in good taste. It would be the duty of a lawyer to discourage the publication of an article where he knew in advance that it was sensational or undignified or might be construed as advertising, and he should give no aid in its preparation. On the other hand, it is not incumbent upon a lawyer publicly to disclaim or deprecate all such published statements which may have been made concerning him, at least unless such statements are very blatant and made under circumstances which might convey the idea that they were inspired by him . . .

Thus the propriety of a lawyer's cooperation with an alumni magazine proposing to publish an article about his firm depends on the purpose of the article, the nature of the article, the occasion of the publication, its tone, and the absence of self-laudation. Where the lawyer has in no way instigated an article which fully meets traditional standards of dignity and appropriateness, his cooperation would not be improper.

Opinion #158 - 10/9/70 (35-70)

Topic: Can a Judge Own an Interest in an Entity that Sells Liquors at Retail or at a Bar?

Digest: A judge may own such an interest if it is legal and the nature of such interest does not detract from the dignity of his position.

Code*: EC 8-8; EC 9-2
DR 8-101 (A); DR 9-101

QUESTION

The State Liquor Authority, in interpreting Section 128 of the Alcoholic Beverage Control Law, excludes judges from holding an interest in an entity that sells alcoholic beverages.

Is it unethical for a judge to have an interest as stockholder or otherwise in a corporation holding a retail on premises license to sell liquors and wines?