

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

Opinion #222 - 12/20/71 (54-71)

Topic: Advertising; Solicitation

Digest: Activities on behalf of
indigents. Exception to
general rule on news-
paper stories

Code*: DR 2-101(A) and (B);
EC 2-25

QUESTION

Is it proper for an attorney to describe to a newspaper reporter seeking material for a story publicizing the opening of a project to furnish free neighborhood legal services to the poor, the free legal services he personally renders at the project, to pose for a photograph with a fictitious client purporting to portray a free consultation, knowing the photograph, with his name and office address, will be published in the news story?

OPINION

It is improper for a lawyer to encourage or acquiesce in publicity portraying his activities in a manner designed to further his professional interests. ABA 42 (1931); ABA 140 (1935); ABA Inf. 552 (1962).

DR 2-101 provides, in part:

"(A) 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; . . ."

"(B) A lawyer shall not publicize himself. . . 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 . . ."

A lawyer may permit himself to be interviewed or photographed as a normal incident to a news story which he does not instigate. N.Y. State 67 (1968); N.Y. State 100 (1969); N.Y. State 119 (1969); N.Y. State 157 (1970). However, he must exercise great care not to use the news item as a vehicle for self-laudation. In Matter of Connelly, 18 App. Div. 2d 446, 478 (1st Dept. 1963), the Court said:

". . . 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."

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". . . 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."

It has frequently been said that the ban imposed by the canons on professional advertising is not aimed at activities intended to benefit the indigent rather than to obtain remunerative legal business. ABA 148 (1935); ABA Inf. 888 (1965) and ABA Inf. 992 (1967). The line of demarkation between permissible publicity flowing naturally from effective worthy services and improper indirect solicitation of legal business is often difficult to draw. Drinker, Legal Ethics, 218 (1953).

However, a lawyer should not use the publicity as a vehicle for promoting his professional status. Preferably posed photographs should be avoided where possible.

Opinion #223 - 12/20/71 (55-71)

Topic: Division of Legal Fees

Digest: New York lawyer may divide partnership income as agreed with partner admitted in a different jurisdiction

Code*: DR 2-102 (D);
EC 2-22

QUESTION

May a New York lawyer divide partnership income by agreement with his partner admitted in a different jurisdiction without regard to who produced the client, performed the services or where the matter was handled or tried?

OPINION

A New York lawyer may form a partnership with a lawyer admitted in a different jurisdiction and maintain offices in New York provided the firm letterhead and listings clearly show the jurisdictional limitations of both attorneys. N.Y. State 144 (1970); ABA 316 (1967); DR 2-102(D).

The provisions of EC 2-22 requiring that the division of legal fees be based on services performed and responsibility assumed pertains only to arrangements between lawyers not of the same firm.

How members of a firm divide income is not normally of ethical consequence either for intrastate or interstate firms, ABA 316 (1967), except that a multi-state law firm may not use in New York a name composed of one or more lawyers not admitted to practice in New York unless the local lawyer is a true partner with a real share in the over-all profits, liabilities and professional responsibilities of the entire firm. N.Y. State 175 (1971).

Which partner produced the client or performed the services or where the work was handled or the matter tried, has no effect ethically on the division of the fee between the partners.