



Committee on Professional Ethics

Opinion #287 - 4/27/73 (52-72;14-73) Topic: Books and articles by lawyer-authors; promotion and advertising

Digest: Books and articles by lawyer-authors should avoid laudatory self-aggrandizement; promotion and advertising for such works must be dignified and not designed to publicize or promote employment of lawyer-author

Code: Canon 9
EC 2-2; 2-14; 4-1; 4-2;
4-5; 9-6
DR 2-101; 2-104(A)(4);
2-105(A); 4-101; 9-101(C)

QUESTION

What general guidelines are applicable to the publication or promotion of books or articles by lawyer-authors, where the book, article or promotional material describes, or includes references to, the author's legal experience or career?

OPINION

The Code appears to make no significant change in the basic standards developed under the former canons relating to the publication or promotion of books or articles by lawyer-authors, where the book, article or promotional material describes, or includes references to, the author's legal experience or career.

The question involves a delicate balance between First Amendment rights and appropriate standards of professional responsibility relating to solicitation and advertising. As recognized in ABA Inf. 1021 (1968):

"The problem of determining what is appropriate for a lawyer to permit to be stated about himself in connection with publications of various kinds is a very troublesome one indeed. Involved is a question of freedom of speech, the need for lawyers in general to learn about the law from other lawyers, the need for lawyers to be leaders in articulating law and political philosophy to the public in general and the desire on the part of the profession to minimize self-aggrandizement and to avoid the solicitation of business through any kind of self-touting or advertising."

OVER---

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #287

-2-

ABA Inf. 1021 (1968) further recognizes the potential conflict raised by these competing policy considerations and that the results in any given case must be reached by an appropriate balancing of the conflicting interests.

The writing and publication of worthwhile law books is of importance to both the profession and the public and should be encouraged. Potential readers should have access to relevant information relating to the author's qualifications, experience, and the like, in order to evaluate such material and intelligently decide whether or not to read what he has written.

Thus, it is not improper for the publishers of law books written by lawyers to include in their announcements and advertisements information in a dignified manner about the lawyer, such as the name of the author's law firm or other material that is relevant to a determination of the value of the book. ABA Inf. 1021(1968); ABA Inf. 578 (1962); ABA Inf. 758(1964); ABA Inf. 920 (1966); N.Y. State 3(1964); N.Y. State 89(1968); N.Y. City 210(1931); N.Y. City 297(1933); Drinker, Legal Ethics 263-264(1953); cf. N.Y. City 871(1968). See also, N.Y. State 190(1971); N.Y. State 270(1972); ABA Inf. 1143 (1970); ABA Inf. 1198 (1971).

On the other hand, books, articles, or promotional material which unduly emphasize, publicize or aggrandize the professional skills or accomplishments of a lawyer-author who has not retired from active practice, would be improper and directly violative of EC 2-2; DR 2-101 and DR 2-104(A)(4). The character of the writing is the determining criterion.

Also relevant are the general guidelines applicable to the promotion of legal seminars and educational programs recently set forth in N.Y. State 283(1973). Among self-laudatory promotional practices which are improper are statements characterizing a lawyer-author as a specialist, in violation of EC 2-14 and DR 2-105(A).

We call to the special attention of all lawyer-authors a helpful admonition from ABA Inf. 1198(1971):

"We caution you additionally, that the Ethical Considerations advise a lawyer to shun personal publicity in connection with articles prepared for lay publication. This is sound advice for all lawyers. But it is particularly sound advice for a lawyer in private practice, in that a lawyer is subject to discipline under DR 2-104(A)(4) if he accepts employment that can be traced to advice he gave to a lay reader in an article in connection with which his own professional experience or reputation was emphasized."

Other provisions of the Code which may apply to books, articles, or related promotional materials, containing references to the

CONTINUED---

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #287

-3-

author's legal experience or career are: Canon 9; EC 4-1; EC 4-2; EC 4-5; EC 9-6; DR 4-101; DR 9-101(C).

A lawyer thus has a duty to discourage, insofar as possible, the publication of such references in articles, books, or promotional materials, whether written by himself or by another, where he knows in advance that they are to be sensational or undignified or might be construed as advertising his law practice, and he should give no aid to their preparation. N.Y. State 283(1973). Similarly, he has an affirmative obligation to endeavor to see to it that all publicity concerning any such article or book by or about him conforms to proper standards. N.Y. City 859 (1963); N.Y. State 283 (1973).
