



## Committee on Professional Ethics

Opinion #379 - 3/26/75 (9-75)

Topic: Solicitation; Advertising.

Digest: Improper for a lawyer on his own initiative to offer his service to an organization of laymen as a public speaker on legal topics.

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

### QUESTION

May a lawyer contact an organization of laymen and inform them of his availability as a public speaker on legal topics.

### OPINION

Pertinent to the question is EC 2-2 which provides:

"The legal profession should assist laymen to recognize legal problems because such problems may not be self-revealing and often are not timely noticed. Therefore, lawyers acting under proper auspices should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise. Such educational programs should be motivated by a desire to benefit the public rather than to obtain publicity or employment for particular lawyers. Examples of permissible activities include preparation of institutional advertisements and professional articles for lay publications and participation in seminars, lectures, and civic programs. But a lawyer who participates in such activities should shun personal publicity."

The practice of a lawyer to communicate with organizations of laymen and inform them of his availability as a public speaker on legal topics has been condemned as an improper solicitation for the opportunity to advertise his professional qualifications and to obtain employment as a lawyer. N.Y. County 219 (1924); N.Y. County 367 (1941).

N.Y. County 367 (1941), responsive to a question similar to the one presented, held that a lawyer's proposal to write letters to organizations such as trade associations, chambers of commerce, clubs, etc. informing them of his availability as a lecturer on certain legal subjects was a "proposed solicitation" which was "improper". The basis for this ruling was reflected in the following language:

"...it will be a case of a lawyer seeking employment by personal communications apparently not warranted by personal relations, and for a purpose which necessarily involves his professional qualifications to advise on certain special legal

problems. ...Even if his primary purpose were only to augment his income by the compensation which he can obtain from such lectures, it seems to us that the inevitable result will be to advertise his qualifications to a large number of prospective clients and to afford the opportunity for obtaining employment in his strictly professional capacity as an attorney".

The impact of the proposed practice on the bar and the public is aptly expressed in the following language in N.Y. City 859 (1963):

"Members of the profession should bear in mind that efforts of lawyers, whether by direct or subtle means, to advertise themselves, debase the profession and damage the public confidence in the integrity of the Bar."

Even assuming that a lawyer is motivated exclusively by a desire to educate members of the public, nevertheless, his solicitation for the opportunity to lecture on legal topics before groups of laymen not only would be undignified but also would appear to be actuated by a desire to advertise himself and to promote his employment. A lawyer should "strive to avoid not only professional impropriety but also the appearance of impropriety". EC 9-6.

Certain guidelines were provided in N.Y. State 283 (1973), as being applicable to a lawyer's participation in an appropriate legal education program. With one modification these guidelines are the same as those approved in ABA Inf. 840 (1965). In essence, these guidelines reflect adherence to the provisions of EC 2-2; 2-5; DR 2-101(A); 2-104(A)(4); 2-105(A).

It is improper for a lawyer to participate in an educational or informational program in the guise of providing the public with educational legal information where the lawyer is in effect publicizing his own practice. N.Y. City 881 (1972). The most important yardstick by which to determine whether a lawyer should participate in a seminar is the nature and content of the program itself and whether it is a bona fide educational program to educate the public. If this standard is met and the lawyer did not initiate the request the participation would not be improper. See N.Y. City 881 (1972); ABA Inf. 1135 (1970); N.Y. State 222 (1971); N.Y. City 806 (1963); N.Y. State 324 (1974); N.Y. County 636 (1974).

DR 2-104(A)(4) is inapplicable where the attorney has initiated his appearance before the group; this initiation constitutes improper solicitation.

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