



## Committee on Professional Ethics

Opinion #505 - 2/9/79 (63-78) Topic: Advertising and publicity; announcement cards; opening of office.

Digest: Lawyer may encourage local newspaper to publish article about the opening of his office provided nothing of value is given to promote its publication; announcement cards may be sent to anyone.

Code: Canon 2;  
DR 2-101(A) and (J),  
2-102(A)(2), 2-103(B)

### QUESTION

A lawyer, recently admitted to the Bar, is opening an office. Under the circumstances, may he:

- (1) cause an article to appear in a local newspaper with respect to the opening of his office?
- (2) send out announcement cards to persons with whom he has had no social or professional relationship?

### OPINION

We have previously explained the revolution brought about in lawyer advertising and publicity as a result of the Supreme Court's decision in Bates v. State Bar of Arizona, 433 U.S. 350 (1977). See, e.g., N.Y. State 487 (1978). In this State, Bates prompted numerous liberalizing amendments to the Ethical Considerations and Disciplinary Rules set forth under Canon 2 of our Code of Professional Responsibility. These amendments, while altogether consistent with Bates, went considerably beyond the Court's mandate in anticipating the need for ever greater freedom in disseminating information about lawyers and their services. See, N.Y. State 500 (1978).

Each of the subparts to the question posed must be examined in the light of these revolutionary changes because there can be no doubt but that prior to Bates each subpart would be answered in the negative. See, e.g., N.Y. State 222 (1971), N.Y. State 157 (1970), N.Y. State 119 (1969), N.Y. State 100 (1969), N.Y. State 67 (1968), ABA 140 (1935), ABA 42 (1931) and ABA Inf. 552 (1962); cf., Matter of Connelly, 18 App. Div.2d 466, 478 (1st Dept. 1963).

The first of the subparts assumes that the newspaper has not approached the lawyer in question. Rather, it is assumed that the lawyer has actively attempted to publicize himself by contacting the newspaper for the purpose of convincing it to do a story about the opening of his office. If the lawyer can convince the newspaper that the opening of his office is newsworthy, under the amended provisions of DR 2-101, there would appear to be no impropriety. The lawyer has simply generated publicity about himself in the form of a news article. Ethically, his conduct is qualitatively no different from advertising per se.

In permitting the lawyer to generate a news article about himself, however, we hasten to call the attention of the Bar to DR 2-101(J) which states:

"A lawyer shall not compensate or give anything of value to representatives of the press, radio, television or other communication medium in anticipation of or in return for professional publicity in a news item."

The provision is intended to avoid deception of the kind generally proscribed by DR 2-101(A). Cf., DR 2-103(B).

When a lawyer advertises, it is usually evident that he has paid for the publicity. When a lawyer is the subject of favorable publicity in a news article, however, the value of that publicity is often enhanced by the appearance that it is being given because someone who is exercising an independent professional judgment considers the matter to be newsworthy. Where that judgment has actually been bought, the public is being deceived.

Thus, the Code as now drawn essentially provides that while it would be permissible for a lawyer to attempt to convince a newspaper that he is deserving of publicity in a news article, it would be unethical for him to use unfair or deceptive means to accomplish that end.

The second subpart of the question posed requires us to examine the recent amendment of DR 2-102.

Prior to its amendment, DR 2-102 generally proscribed the use of announcement cards except under certain stated circumstances. These exceptions were enumerated in DR 2-102(A)(2). This had the effect of permitting lawyers to mail a "brief professional announcement card ... to lawyers, clients, former

clients, personal friends, and relatives."

When DR 2-102 was amended in 1978, the general proscription was eliminated. In its place, DR 2-102(A) now expressly permits the use of professional announcement cards, subject only to the proviso that "the same do not violate any statute or court rule, and are in accordance with DR 2-101 [as amended]." What had previously been stated as exceptions to the general proscription are now made to appear only as illustrations of permissible conduct. Hence, the reference to "lawyers, clients, former clients, personal friends, and relatives" contained in the present DR 2-102(A)(2) cannot be construed as a limitation. The enumeration is nothing more than a vestige of a schema which has since been thoroughly modified and, for clarity's sake, should have been eliminated in the amendatory process. It should now be clear that announcement cards may be sent to anyone.

For the reasons stated, subject to the qualifications hereinabove set forth, each subpart of the question posed is answered in the affirmative.

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