



COMMITTEE ON PROFESSIONAL ETHICS

Opinion 912 (3/15/12)

Topic: Publishing criticism of other attorneys

Digest: The Rules of Professional Conduct do not prohibit a lawyer from hosting or participating in a blog dedicated to publishing factually accurate criticism of another lawyer's professional conduct.

Rules: 8.2, 8.3, 8.4

QUESTION

1. May a lawyer host or participate in an internet blog established as a forum for lawyers to recount their experiences in dealing with an adversary whose past professional conduct is considered by them to have been unethical, harassing or abusive?

OPINION

2. Although Rule 8.2 of the New York Rules of Professional Conduct (the "Rules") expressly addresses lawyer criticism of judges ("A lawyer shall not knowingly make a false statement of fact concerning the qualifications, conduct or integrity of a judge or other adjudicatory officer or of a candidate for election or appointment to judicial office"), there is no comparable provision that specifically addresses public criticism of a lawyer by a lawyer. Therefore, any ethical restraint on such expression would, under the Rules, necessarily derive from the more general provisions of Rule 8.4(c), prohibiting a lawyer from engaging in conduct "involving dishonesty, fraud, deceit or misrepresentations", or Rule 8.4 (d), prohibiting a lawyer from engaging in conduct that is "prejudicial to the administration of justice."

3. Assuming that the blog criticism is sufficiently accurate and in context not to run afoul of Rule 8.4(c), the question is whether there are any limitations arising from Rule 8.4(d) on a lawyer's factually sustainable public criticism of another lawyer. We believe there are none. Still, we add two observations:

4. First, the "Standards of Civility" adopted for the Uniform Court System provide: "Whether orally or in writing, lawyers should avoid vulgar language, disparaging personal remarks or acrimony towards other counsel, parties or witnesses." 22 NYCRR part 1200, App. A, I(B). Although these standards are aspirational, and not intended as rules to be enforced by sanction or disciplinary action, they nonetheless elaborate a norm of acceptable behavior that excludes gratuitous vulgarity, disparagement and vituperation. We also urge the inquirer "to avoid petty criticisms, and to make critical statements only when motivated by a desire to improve the quality of . . . the legal system in general, and then to present his [or her] views only

in a temperate, dignified manner.” *Cf.* N.Y. City 1996-1 (holding a lawyer may write an article containing well-founded criticisms of a sitting judge for abusive and intemperate trial conduct, notwithstanding that New York State Commission on Judicial Conduct found no cause for pursuing an investigation into the same allegations of misconduct).

5. Second, Rule 8.3(a) imposes a reporting requirement upon a lawyer who “knows that another lawyer has committed a violation of the Rules . . . that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer.” To the extent that the negative information to be published about an attorney’s professional conduct is both significant and truthful, Rule 8.3(a) may require reporting such misconduct to a “tribunal or other authority empowered to investigate or act upon such violation.”

CONCLUSION

6. The Rules of Professional Conduct do not prohibit a lawyer from hosting or participating in a blog dedicated to publishing factually accurate criticism of another lawyer’s professional conduct.

(57-11)