

Nebraska Ethics Advisory Opinion for Lawyers
No. 73-7

THE PUBLIC RELATIONS COMMITTEE OF THE BAR MAY APPOINT LOCAL OR REGIONAL REPRESENTATIVES TO ASSIST IN OBTAINING PUBLICITY CONCERNING BAR ASSOCIATION PROGRAMS AND ACTIVITIES OF A PUBLIC NATURE, BUT SUCH REPRESENTATIVES MAY NOT ETHICALLY ACT IN MATTERS IN WHICH THEY ARE PERSONALLY INVOLVED, AND SUCH PUBLICITY SHALL NOT INCLUDE ANYTHING CONSTITUTING THE ADVERTISING OF THE SERVICES OF PARTICULAR ATTORNEYS. NEWS STORIES PROCESSED IN THIS MANNER MAY INCLUDE RELEASES GENERATED BY STATE BAR COMMITTEES COVERING PUBLIC AND CITIZENSHIP ACTIVITIES OF PARTICULAR ATTORNEYS UNRELATED TO SPECIFIC PROFESSIONAL SERVICES.

CODE PROVISIONS INVOLVED

Canon 2 in discussing the ethical considerations involved in this states in section EC 2-2:

"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."

Sections EC 2-9 and EC 2-10 discuss the traditional "ban against self-advertising by lawyers, which is subject to certain limited exceptions" and recognize that certain forms of "assistance" by the bar are appropriate.

Disciplinary Rule DR 2-101 (B) as to publicity provides:

"A lawyer shall not publicize himself, his partner, or associate as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in city or telephone directories, or other means of commercial publicity, nor shall he authorize or permit others to do so in his behalf except as permitted under DR 2-103. This does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name:"

Disciplinary Rule DR 2-103 states:

"A lawyer shall not recommend employment, as a private practitioner, of himself, his partner, or associate to a non-lawyer who has not sought his advice regarding employment of a lawyer."

Subdivision (D) of this Rule sets forth the following prohibition and qualification:

"A lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his services or those of his partners or associates. However, he may cooperate in a dignified manner with the legal service activities of any of the following, provided that his independent professional judgment is exercised in behalf of his client without interference or control by any organization or other person:

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"(4) A bar association representative of the general bar of the geographical area in which the association exists."

DR 2-104 (A) prohibits the acceptance of employment resulting from "unsolicited advice" but excepts certain activities including those referred to in section DR 2-103 (D) (4). These exceptions are described as follows:

"(2) A lawyer may accept employment that results from his participation in activities designed to educate laymen to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services if such activities are conducted or sponsored by any of the offices or organizations enumerated in DR 2-103(D)(1) through (S) and to the extent and under the conditions prescribed therein.

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"(4) Without affecting his right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as he does not emphasize his own professional experience or reputation and does not undertake to give individual advice."

Canon 8, section EC 8-1, as to improving the legal system enjoins lawyers to render assistance.

"By reason of education and experience, lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein. Thus they should participate in proposing and supporting legislation and programs to improve the system, without regard to the general interests or desires of clients or former clients."

QUESTIONS PRESENTED

The Committee on Public Relations of the state bar is

considering establishment of state-wide representatives of the bar to assist in providing outlets for state and local bar associations in the dissemination of bar news. In order to provide liaison with local newspapers and radio and TV stations these representatives would be established in some 30 or more areas as a part of the public relations program of the bar.

If such a system is put into effect the state committee would wish to advise each representative of the ethical guide lines which would govern his or her participation. Some of the specific questions raised are (1) whether the Code prohibits such activity generally, (2) what kind and type of news stories would be appropriate for processing, (3) whether news stories might be disseminated as to citizenship awards or public activities of individual attorneys not related to the handling of specific professional matters, and (4) whether such a representative might act in releases involving himself or his firm.

INTERPRETATIONS OF CANONS AND CODE PROVISIONS

At the outset this Committee calls attention that the "wisdom and value" of the suggested program "is not for this Committee to consider." See Formal Opinion No. 307. Moreover, as stated in Informal Opinion No. 151, advertising activities of bar associations are not objectionable because they may bring business to lawyers.

There are numerous opinions sustaining advertising and public relations activities of bar associations. The restrictions imposed require supervision of a bar association and the avoidance of solicitation or publicity advertising "particular lawyers." Formal Opinion 205 dealt with publicity as to bar groups willing to serve low-income groups at reduced rates. The opinion said:

"We are of the opinion that the plan here presented does not fall within the inhibition of the Canon. No solicitation for a particular lawyer is involved. The dominant purpose of the plan is to provide as an obligation of the

profession competent legal services to persons in low-income groups at fees within their ability to pay. The plan is to be supervised and directed by the local Bar Association. There is to be no advertisement of the names of the lawyers constituting the panel. The general method and purpose of the plan only is to be advertised. Persons seeking the legal services will be directed to members of the panel by the Bar Association. Aside from the filing of the panel with the Bar Association, there is to be no advertisement of the names of the lawyers constituting the panel. If these limitations are observed, we think there is no solicitation of business by or for particular lawyers and no violation of the inhibitions of Canon 27."

Similar views were expressed in Formal Opinion No. 227 concerning advertising of Lawyer Referral services:

"Advertising of that service must be primarily to give beneficial information to the lay public and to enable lawyers generally to render a better professional service. While the fact that incidental benefits may flow to the members of the profession does not condemn such a plan, the primary object thereof, if it is to be advertised, must be benefit to the public and not to the members of the profession or any particular or selected group thereof. See Opinion 179."

In Formal Opinion No. 121 the following rule was announced:

"A local bar association may purchase advertising space in a local newspaper for the purpose of informing the public how and when to consult an attorney provided that such advertising is dignified in tone, does not contain pictures, and does not mention

the name of any individual lawyer."

Various kinds of publicity and advertising by bar associations have been upheld, including: Informal Opinion No. 878 (legal check-up program); Informal Opinion No. 631 (distribution of pamphlets); Informal Opinion No. 436 (Law Day letters).

DISCUSSION

The Code of Professional Responsibility in our opinion clearly encourages bar associations to establish effective machinery for the dissemination of publicity concerning bar association programs and activities. This would necessarily include those matters of a public nature authorized by the bar association including committee and section reports and activities, statements by bar association officers with reference to bar association activities and news releases as to association actions. It would not be ethical in our opinion for such publicity to include personal professional activities of any lawyers and if a system of local representatives is established the local representative should not act in any matter in which he is personally interested or involved.

The third question presented as to whether news stories may be disseminated as to citizenship awards or public activities of individual lawyers not related to the handling of specific professional matters, involves considerations of delicacy that do not permit generalizations. So long as such stories are developed by appropriate state bar committees and do not relate to specific professional services of attorneys but instead relate to general citizenship activities, this Committee believes they may be appropriate. There is a wide range of general public activities, participation in which the bar should encourage. Such participation and publicity might well reflect favorably on the profession. We think, however, that extreme care should be exercised to avoid releases of this kind which might be interpreted as advertising the services of particular attorneys. In the gray areas which may arise in this connection, further and more specific opinions of this Committee should be

requested.

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