

Nebraska Ethics Advisory Opinion for Lawyers  
No. 75-14

1. IT IS IMPROPER FOR A LAWYER TO PREPARE, CAUSE TO BE PREPARED, OR PARTICIPATE IN THE PUBLICATION OF NEWS ARTICLES INFORMING THE PUBLIC OF HIS ATTENDANCE AT LEGAL EDUCATION SEMINARS OR PROGRAMS OF A SIMILAR NATURE.

2. NEITHER THE NEBRASKA STATE BAR ASSOCIATION NOR ANY OF ITS AFFILIATED OR SUBORDINATE ORGANIZATIONS OR COMMITTEES SHOULD IDENTIFY IN NEWS RELEASES ANY LAWYERS WHO WERE MERELY IN ATTENDANCE AT LEGAL EDUCATION SEMINARS OR PROGRAMS OF A SIMILAR NATURE SPONSORED BY ANY OF THE ABOVE ORGANIZATIONS.

Inquiry has been received concerning news items appearing in newspapers setting forth the names of local lawyers who were in attendance at legal education seminars, and requesting our opinion as to the propriety thereof, suggesting that such a news item might indicate to the general public that the lawyer or lawyers named had attained an expertise in the field which was the subject of the seminar, and thereby constitutes prohibited advertising. .

DR 2-101 (A) of the Code of Professional Responsibility provides:

"A lawyer shall not prepare, cause to be prepared, use, or participate in the use of, any form of public communication that contains professionally self-laudatory statements calculated to attract lay clients; as used herein, 'public communication' includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, magazine, or book."

DR 2-101 (B) states:

"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."

The exceptions permitted under DR 2-103 are not applicable to the present factual situation.

At the outset, we are faced with two methods by which the information could have been obtained by the newspaper, viz: first, either directly or indirectly from the lawyer himself; or second, from a news release by the sponsoring organization, or from outside sources without the knowledge of the named lawyer or lawyers involved.

In the first situation, if disseminated by the lawyer directly or indirectly, such would constitute a violation of DR 2-101. The Committee on Ethics and Professional Responsibility of the ABA set forth the following rule in Informal Decision C-479:

"You propound to this Committee the question: Does a lawyer's release of news items of his activities to a newspaper for publication, unsolicited by the newspaper, constitute unethical conduct?"

"The question propounded assumes that the newspaper does not solicit the proposed news releases, but that the lawyer solicits the newspaper to accept for publication the proposed news material directly portraying the activities of the lawyer, designed to accomplish the ulterior purpose of extolling his good name and virtues to the general public. Such conduct of necessity would

constitute a form of public self-laudation designed indirectly to further the professional interests of the lawyer.

"We are therefore constrained to answer the proposed question in the affirmative."

Coming then to the second situation, unsolicited newspaper publicity, we quote from Formal Opinion 62:

"But if it be true that such publication has been made as suggested, without his consent, nevertheless it was the duty of the lawyer, as soon as his attention was called thereto, to request and require the publisher to discontinue publication of the article. The failure to do so would permit him to be 'advertised' by indirection contrary to the provisions of Canon 27."

The provisions of Canon 27 referred to have been incorporated into DR 2-101.

Informal Opinion 854 states:

"From a review of the Committee's Opinions, it would appear that the first consideration as to whether the newspaper article violates Canon 27 would be to consider whether or not the newspaper article was solicited or unsolicited. If it was solicited particularly with the view in mind of gaining some benefit, then clearly such an article would be improper and a violation of Canon 27. On the other hand, if the reporter from the newspaper wrote the article without consultation with the attorney or without the attorney having anything to do with the solicitation of the article, then certainly the attorney could not be charged with unethical conduct.

"As you point out in your letter, it is difficult in many instances to establish whether the

newspaper article was solicited or unsolicited and whether the intent of the lawyer involved was to extol his ability as an attorney. If this is a repeated practice on the part of a newspaper to publicize the cases handled by one or more particular attorneys and to extol their ability in the articles, it would appear to the Committee that such news articles were obtained with the attorney's consent as pointed out in Formal Opinion 62 cited above. In any event, the repeated writing of such articles would call the matter to the attention of the attorney and therefore, we believe it would be his duty in accordance with Formal Opinion 62 to request that the newspaper discontinue such publications."

In Advisory Opinion [No. 74-11](#) this Committee set forth certain guidelines with respect to newspaper advertising, and though not directly in point, certain discussion therein is applicable to the present problem and should be incorporated by reference.

An inquiry has also been received from NCLE, Inc., a subordinate organization of the Nebraska State Bar Association, concerning the propriety of sending but news releases identifying by name the lawyers who were in attendance at legal education seminars.

The holding in Formal Opinion 307 of the ABA Committee on Professional Ethics would seem to be applicable. The Committee's opinion was requested on the ethical problems involved in the annual check-up program established and promoted by state and local bar associations. The program was to be promoted by the bar association by means of speakers, committees, films, and institutional advertising. The Committee ruled:

"There is nothing unethical in a bar association sponsoring and promoting annual legal check-up programs among the lay public. It may engage in a dignified

institutional educational campaign so long as it does not involve the identification of a particular lawyer with the check-up program. Such educational material may point out the value of the annual legal check-up and may be printed in newspapers, magazines, pamphlets, and brochures, or produced by means of films, radio, television or other media. The printed materials may be distributed in a dignified way through the offices of persons having close dealings with lawyers as, for example, banks, real estate agents, insurance agents and others. They may be available in lawyers' offices. The bar association may prepare and distribute to lawyers materials and forms for use in the annual legal check-up.

"Lawyers as individuals may not ethically permit their names to be identified with such promotion. They may not point out the need for such a check-up to those who are not their regular clients, except by means of bar association sponsored pamphlets available in their offices for taking. They may direct attention of their regular clients to the value of a check-up. "

The motive of the lawyer is always the important factor, and such can be judged generally only by the subject matter of the releases, their tone, and the general reputation of the lawyer. Again, the lawyer should not only avoid all aspects of both direct and indirect advertising for professional employment, but also, should avoid suspicion in the premises. "He should strive at all times to uphold the honor and to maintain the dignity of the profession." Informal Opinion 546. We conclude:

1. A lawyer should not prepare or cause to be prepared a news release for publication setting forth his attendance at any legal education seminar or programs of

a similar nature.

2. A lawyer should not knowingly permit the use of his name in news articles concerning such attendance.

3. The Nebraska State Bar Association, its subordinate bodies and committees, should not identify lawyers in attendance at such programs.

Nebraska Ethics Advisory Opinion for Lawyers  
No. 75-14