

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #3 - 12/4/64 (3-64)

Topic: Newspaper Advertising.
Publicity of Lawyer's Authorship.

Digest: Improper for lawyer to permit publicity of his recent authorship of some work where it is merely a form of indirect advertising.

Canon: Former Canon 27

QUESTION

The "X" Company

Gentlemen:

You have submitted to this Committee a proposed release with respect to the work done by an attorney as contributing author to the first volume of an encyclopedic work on trial techniques and practices.

You have asked whether there is any impropriety in distributing this press release to newspapers in the attorney-author's home community. We understand that the proposed release has been prepared by your company as part of the promotion campaign for the volume of which he is the author. While it is not within the province of this Committee to answer questions from lay organizations, we have decided to treat the question as though directed to us by the attorney involved, and accordingly we reply as follows:

OPINION

Canon 27 prohibits indirect advertising for professional employment, such as furnishing or inspiring newspaper accounts and the like. The proposed press release, while it contains the name of the attorney, does not identify him except to state that he is "general claims manager for a large insurance company". No address is given for either the attorney or the insurance company with which he is associated.

In Matter of Connelly, 18 App. Div. (2d) 462, the Appellate Division of the Supreme Court, First Dept., had occasion to consider an article which appeared in "Life" magazine with respect to the personnel and accomplishments of a New York law firm. The court there said:

"The propriety of a lawyer's conduct is to be judged on the basis of the nature and wording of the particular article, the occasion for and media of publication, and the nature and extent of his participation in the publication by the furnishing of material therefor, or otherwise. * * * What is wrong is for the lawyer to augment by artificial stimulus the publicity normally resulting from what he does, seeing to it that his successes are broadcast and magnified."

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While the court in that case pointed out that the Canons of Ethics do not apply to anyone except to a member of the bar, and that the propriety or impropriety of the publication depends primarily on the extent of the lawyer's participation in the publication; it seems apparent that the proposed news release submitted for our consideration would hardly be published without the consent of the attorney-author.

In his work entitled "Legal Ethics", Henry S. Drinker states, at page 248:

"great care should, however, be exercised by lawyers and judges in endorsing law books sold by publishers; both the lawyers and the publishers should refrain from reference to any specific causes and also from reference to the lawyer's position generally or in the particular field of work covered."

The publication involved in the present inquiry is of interest to, and to be used only by, the legal profession. The release of the proposed announcement to daily newspapers or other lay publications as distinguished from such a periodical as the "New York Law Journal", cannot be inspired solely by the desire to promote the sale of a large number of books but rather by the wish of the publisher or its advertising agent to make the attorney-author happy with his employment. In other words, it would seem that the sole purpose of such a news release would be for the attorney's aggrandizement.

It is felt that the proposed news release falls under the category of indirect advertising and we cannot approve its publication in the form proposed.

Opinion #4 - 11/19/64 (4-64)

Topic: Communications with Opposing Party.
Negotiations with Lay Adjuster.

Digest: Not improper for lawyer to negotiate with agent of opposing party who is a layman.

Canon: None

QUESTION

May an attorney for a claimant discuss the legal aspects of liability with a lay adjuster for the defendant's insurance company?