

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

furtherance of their candidacy, speaking for themselves and having others speak for them. However, all activities of a judicial candidate should be on a high plain consistent with the dignity of the office.

The candidate is free to express his opinion on political issues and on the qualifications of those who oppose him. This would include criticism of an incumbent judge, so long as the criticism is truthful, in accord with principles of freedom of speech. Such criticism and arguments must be dignified and stay within the bounds of truth.

Judicial candidates may solicit the support of lawyers and others in their campaign activities. Committees may be organized and endorsements may be published, and if all endorsers are lawyers, they may be identified as lawyers in the advertisements. Endorsement would be ethical whether the office sought is a judicial or non-judicial one and whether it requires legal experience or not.

It is not improper to form citizens' committees to support the candidacy, provided that lawyers whose names appear in a list of the committee are not identified as lawyers, unless all members of the committee are lawyers.

While it is the duty of the members of the Bar to endeavor to promote the appointment or election of qualified judicial candidates (Canons of Prof. Ethics #2), a published endorsement by an individual lawyer would not be proper.

Restrictions on the use of lawyers' committee imposed by bar association rules should be honored by lawyers subject thereto.

<u>Opinion 89 - 10/7/68 (22-68)</u>	<i>Topic:</i> ARTICLES <i>Digest:</i> PUBLICATION OF LEGAL ARTICLES IN NEWSPAPERS AND MAGAZINES. <i>Canons:</i> Former Canons 40, 27
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QUESTION

May an attorney write a series of unsolicited articles on legal subjects in lay magazines and newspapers?

OPINION

It is the opinion of the Committee that it would be proper for an attorney to write such articles.

Canon 40 of the Canons of Professional Ethics expressly states that "a lawyer may with propriety write articles for publication in which he gives information upon the law." This Canon has been interpreted by many bar associations, see ABA 92, ABA Informal 228, ABA 463, 538, 743; New York City Bar Association 270, 859; New York County Lawyers 264, 396, 516. All of these opinions permit the publication of articles provided they are of a general nature. The writing may be done with or without compensation, ABA 92; New York City 270.

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Under no circumstances may the writer-lawyer answer even anonymously inquiries for advice in newspapers or other publications. Canon 40, ABA 270, ABA Informal 538.

Neither should the writing be in any way self laudatory since this would have the effect of being indirect advertising in violation of Canon 27. (See Drinker on Ethics, p. 264). City Bar opinion 859 states:

"When a lawyer himself writes a book, article or script, the material should not contain statements which praise or emphasize the lawyer's ability or skills, or statements which describe the lawyer in laudatory terms or as having prominent clients or special success in any branch of the law."

The writer-lawyer should also avoid any suggestion of puffing in the biographical material accompanying the article. It should be limited to a short statement that he is a member of the Bar of the State who has written or lectured on legal subjects. (New York County 516).

See also EC 2-5 & DR 2-104(A)(4)

Opinion #90 - 10/7/68 (17-68)

Topic: ESCROW FUNDS
Digest: DEPOSIT OF CLIENT'S FUNDS
IN INTEREST-BEARING SAVINGS
ACCOUNT
Canon: Former Canon 11

QUESTION

May an attorney who is holding client's funds in escrow deposit those funds in an interest-bearing savings account?

OPINION

This is largely a question of law rather than ethics, and this Committee does not answer questions of law. The lawyer's professional duty is to treat the funds in all respects as the client's property and if any income is realized on the funds, it would, of course, belong to the client. (N.Y.City 181 and 590; ABA Inf. 859.)

Whether it is proper to deposit the funds in an interest-bearing savings account will depend upon the circumstances. In some cases the client may believe he has the right of immediate withdrawal not subject to the notice and waiting period which sometimes applies to savings accounts. In some cases, the right of immediate withdrawal may be immaterial and it would be to the client's advantage to have the funds draw interest. Basically, it is a matter of the attorney's authority. The safest procedure would be to have the client's specific instructions whenever possible.