



Committee on Professional Ethics

Opinion #283 -- 2/23/73 (63-72) Topic: Lawyer participation in legal seminars and educational programs; promotion and advertising for such programs

Digest: Lawyer may participate in appropriate legal seminar and educational programs, subject to specified guidelines; promotion and advertising for such programs must be dignified and not designed to publicize or promote employment of lawyer participants.

Code: EC 2-2; 2-5.
DR 2-101; 2-101(A); 2-104(A)(4);
2-105(A)

QUESTIONS

1. What general guidelines are applicable to participation by lawyers in legal educational seminars and programs?
2. What general guidelines are applicable to the advertising and promotion of such seminars and programs?

OPINION

1. The provisions of the Code directly applicable to participation in educational legal seminars are EC 2-2, EC 2-5, and DR 2-104(A)(4).

EC 2-2 provides:

"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."

EC 2-5 provides:

"A lawyer who writes or speaks for the purpose of educating

OVER---

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #283

-2-

members of the public to recognize their legal problems should carefully refrain from giving or appearing to give a general solution applicable to all apparently similar individual problems, since slight changes in fact situations may require a material variance in the applicable advice; otherwise, the public may be misled and misadvised. Talks and writings by lawyers for laymen should caution them not to attempt to solve individual problems upon the basis of the information contained therein."

DR 2-104(A) (4) provides:

"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."

See also DR 2-101 which, *inter alia*, condemns the preparation and use by lawyers of professionally self-laudatory statements calculated to attract lay clients, or commercial publicity. Likewise DR 2-101 condemns authorizing or permitting others to circulate or use such promotional material on the lawyer's behalf.

To the extent that these provisions limit the use of personal publicity designed to attract clients, they carry forward widely accepted standards under the former canons.

The most comprehensive opinion under the former canons is ABA Inf. 840 (1965) which approved a number of general guidelines applicable to such programs. These guidelines are set forth below:

1. It is...proper for a lawyer to participate in a legitimate seminar on a legal subject as long as the seminar is run in a proper manner.
2. The seminar must have as its purpose the imparting of information to the participants, that is, its purpose must be educational in nature. It is improper for a lawyer to participate in a seminar the main purpose of which is to publicize, or make money for, its sponsors, the lawyer, or others.
3. The seminar must be sponsored by a bar association, school or other responsible public or private organization. It is improper for a lawyer to participate in a seminar sponsored by an organization lacking in complete responsibility.
4. Seminar participants may properly consist of lawyers or laymen or both. Those attending the seminar may properly consist of lawyers or laymen or both.

CONTINUED---

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #283

-3-

5. A lawyer may properly be paid for his participation in the seminar.
6. The seminar announcement and other written materials may list the name of a lawyer participant with a short factual and dignified statement of his qualifications.
7. It is...improper for an attorney to answer questions of laymen concerning their specific individual problems.

ABA Inf. 1021 (1968) similarly stated:

"Continuing legal education programs today are presented sometimes by non-profit corporations, sometimes by educational institutions, sometimes by Bar Associations, sometimes by corporations for profit, and sometimes by lawyers themselves or their law firms. We think in determining what is appropriate for a lawyer to do in participating in these programs and what is appropriate for a lawyer to permit to be said about him will not turn on the question as to whether or not a profit is to be made from the program but will turn on the question as to whether or not the overall thrust of the program is designed as a program to advertise a particular lawyer or a group of lawyers. If it is, then the same kind of information about his law firm, about his past accomplishments, etc. would be improper, whereas if it is not, then it is proper to tell persons who may desire to attend these programs any information that is relevant so far as their making up their mind as to whether the program would be worthwhile. This could include the name of his law firm, his experience, etc. Of course, the information must be presented in a dignified manner."

ABA 298 (1961) recognized that lawyers and judges could appear in various types of non-commercial educational or public informational programs produced by television and broadcasting companies, and "be identified as such, either generally or individually, provided, always, that such programs conform to the proper standards of the Bench and Bar". See also, ABA Inf. 384 (1960), ABA Inf. 503 (1962), ABA Inf. 809 (1965) and ABA Inf. 1136 (1969).

In our opinion, the provisions of the Code require no substantial change in the above quoted general guidelines from the American Bar Association opinions decided under the former canons. We find, however, that guideline number 2 in ABA 840 (1965) is in need of clarification. Where a major purpose of the program is educational, a lawyer's participation is not rendered improper merely because the program is commercially sponsored, or because the primary motive of the sponsor is to make money. N.Y.State 204 (1971); ABA 291 (1961); ABA Inf. 894 (1965); ABA Inf. 1094 (1969); and ABA Inf. 1179 (1971). On the other hand, it would be inappropriate for a lawyer to participate in such a commercially sponsored "educational

OVER---

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #283

-4-

or informational" program in the guise of providing the public with educational legal information, where the sponsor 'uses the content of the program to emphasize or tout itself, or its services, capabilities or expertise' [See N.Y. City 881 (1972)], where the lawyer is in effect endorsing his sponsor's products or services, or publicizing his own practice, or that of his law firm, or where the accompanying publicity or promotional material fails to meet the basic standards set forth in this opinion.

2. As regards seminar publicity and promotional material, ABA Inf. 840 (1965) further stated:

"We recognize that there is an element of advertising in giving the name of the firm, academic degrees, legal affiliations, offices and honors but consider that on balancing of interests the facts mentioned may be stated. Seminars, when properly conducted, are beneficial and their success is in part dependent upon the number of registrants. The brochure must be prepared to show that the men who will lecture are qualified and the facts mentioned may be necessary to be shown to demonstrate their qualifications."

Following the adoption of the Code, ABA Inf. 1135 (1970) reaffirmed the general standards applicable to seminar publicity and promotional activities of ABA Inf. 840 (1965). ABA Inf. 1135 (1970) also held that lawyer participants could furnish, and that sponsoring bar associations or continuing legal education associations could send out, appropriate news releases and pictures concerning seminar participants. While recognizing as "a much better practice for the bar association or legal education organization to send out [such materials] than for the lawyer to do so", the opinion further permits a participating lawyer to send out the release, provided he conforms to the provisions of EC 2-2 and DR 2-101(A).

The opinions above referred to make clear that promotional and advertising materials relating to seminars and educational programs should be dignified and designed to publicize the seminar or program rather than the lawyer participants. Assuming that this general standard is met, it would be proper for sponsoring organizations to issue a press release to various media on the seminar or program and to include in the release the following information as to any of the lawyer participants:

- a. The lawyer's picture;
- b. The topic on which he will speak;
- c. His name, the name of his law firm, and the place where he practices;
- d. His earned degrees and other honors obtained by him;
- e. Such general background information as may indicate that he is qualified to speak on the particular topic assigned to him; and
- f. Where the lawyer is in fact experienced or qualified in the particular field of law on which he is to speak, the release may so state.

CONTINUED---

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #283

-5-

Until the adoption of a plan for certification of specialists pursuant to DR 2-105(A)(4), it would be improper for program promotional material to describe a lawyer as a specialist or as specializing in any kind of practice, or to use terms of like import. Examples of inappropriate descriptive terms are found in such opinions as N.Y. City 871 (1968) and N.Y. City 881 (1972). To date, no program for the certification of specialists has been adopted in this state.

Where a lawyer participant receives a direct inquiry from any news media relating to his program participation, we suggest that he should where feasible refer the inquiry to the sponsoring organization. There would, however, appear to be no basic objection to his furnishing the media in response to such an inquiry with his picture and with any of the above listed information which is purely factual. Cf. N.Y. State 222 (1971); N.Y. City 806 (1955). But we cannot approve of his including in the material such self-laudatory statements as that he is in fact either experienced or qualified in the particular field of law in which he is to speak. DR 2-101 and DR 2-105(A). Nor can we approve of lawyer participants in sponsored educational programs preparing personal publicity to be released directly by themselves rather than by the sponsoring organization to news media, absent some direct request from the media to which the information is given, as apparently permitted by ABA Inf. 1135 (1970).

Where, in response to any news media inquiry, a lawyer participant furnishes permissible information, it would also be his duty to discourage, insofar as possible, the publication of any article where he knows in advance that it is to be sensational or undignified or might be construed as advertising, and he should give no aid to its preparation. See, N.Y. City 806 (1955); N.Y. State 157 (1970); Matter of Connelly, 18 A.D.2d 466, 478; 240 N.Y.S. 2d 126, 138 (1st Dept. 1963). Similarly, he has an affirmative obligation to endeavor to see to it that all publicity concerning the seminar or program conforms to proper standards. N.Y. City 881 (1972).

We take this occasion to remind members of the Bar that it has been consistently held to be improper for a lawyer "to promote, inspire or encourage a newspaper to publish a report regarding his individual attendance at a [legal] conference or symposium". See N.Y. State 100 (1969) and opinions therein cited.
