



## Committee on Professional Ethics

Opinion #540 - 3/29/82 (7-82)

Topic: Advertising; Bar Association pamphlets.

Overrules in part N.Y. State 46, 211.

Digest: Proper for lawyer to use New York State Bar Association "Know Your Rights Pamphlet Series" in direct mail and other advertising.

Code: DR 2-101,2-103(A)

### QUESTION

1. May a lawyer distribute the New York State Bar Association "Know Your Rights Pamphlet Series" in a general mailing to clients and non-clients?

2. May a lawyer include mention of the availability of the "Know Your Rights Pamphlet Series" in advertisements for the lawyer?

### OPINION

It is not improper for a lawyer to mail pamphlets in the "Know Your Rights Series" prepared by the New York State Bar Association to clients and non-clients or to mention the availability of these pamphlets in advertisements for the lawyer.

DR 2-101 permits advertising and other publicity by lawyers provided it is not false or deceptive and does not contain puffery, self-laudation or claims regarding the quality of the lawyer's legal services which cannot be measured or verified.

This Committee has held that it is permissible for an attorney to use direct mail advertising. N.Y. State 507 (1979); N.Y. State 508 (1979). Subsequent to the Committee's opinions in N.Y. State 507 and 508, the Court of Appeals held in Matter of Koffler, 51 N.Y. 2d 140 (1980), cert. denied, 101 S. Ct. 1733 (1981), that Section 479 of the Judiciary Law and DR 2-103(A) could not constitutionally be interpreted to proscribe direct mail advertising by an attorney.

Earlier decisions of this Committee, issued prior to the United States Supreme Court decision in Bates v. State Bar of Arizona, 433 U.S. 350 (1977), permitted attorneys to send pamphlets prepared by the Bar Association to clients and friends, and to distribute such pamphlets to members of an adult education class and to persons visiting the attorney's office. N.Y. State 211 (1971);

N.Y. State 46 (1967). These opinions imposed limitations which prohibited the attorney from making a wholesale distribution of the pamphlets by mail or attaching his name or a business card in connection therewith. In light of DR 2-101, Bates, supra, and Matter of Koffler, supra, these limitations can no longer be applied, and to the extent that N.Y. State 211 or N.Y. State 46 prohibit use of Bar Association pamphlets in direct mail advertising, they are hereby overruled.

For the reasons stated, the questions posed are answered in the affirmative.

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