



ILLINOIS STATE
BAR ASSOCIATION

ISBA Advisory Opinion on Professional Conduct

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This Opinion was **AFFIRMED** by the Board of Governors in July 2010. Please see the 2010 Illinois Rules of Professional Conduct 7.1 and 7.2. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

Opinion No. 763
March 26, 1982

Topic: Indirect Advertising

Digest: There is no prohibition against a lawyer cooperating with a newspaper in the publication of an article dealing with legal subjects in a general manner and with appropriate credits as to authorship; nor is there any prohibition against news releases by lawyers of their attendance at legal seminars on particular subjects.

Ref.: Rule 2-101
ISBA Opinions 141, 201 and 266
Bates v. State Bar of Arizona, 433 U.S. 350.

FACTS

As a result of arrangements between a newspaper editor and a local attorney in a small downstate community, the attorney prepared an article for publication in the newspaper entitled "Tax Program is Analyzed" in which the lawyer analyzed the Economic Recovery Tax Act of 1981. With the cooperation of the attorney involved, an "Editor's Note" was prepared and inserted as a preface to the article as published. The Editor's Note was as follows:

"This analysis of the tax act of 1981 on area residents was prepared by (giving the name of the attorney and his firm). His area of concentration is in tax and

business."

Shortly thereafter the law firm prepared and submitted to the same local newspaper for publication a news release which was published under the column entitled "What's Happening in Business" which identified three members of the law firm who had attended various Illinois Institute of Continuing Legal Education (IICLE) seminars and specifying the seminars which each attorney attended.

QUESTIONS

The inquiring lawyer asks two questions:

1. Does the preparation of the article analyzing various aspects of the recently enacted tax legislation and the cooperation with the newspaper in securing publication constitute a violation of the Code of Professional Responsibility?
2. Does the submission by the law firm of an account of participation in IICLE seminars by members of the firm to a local newspaper for publication constitute a violation of the Code of Professional Responsibility?

OPINION

Rule 2-101 of the Code of Professional Responsibility deals with publicity and advertising by lawyers and reflects the impact of the United States Supreme Court decision, on constitutional grounds, in Bates v. State Bar, (1977), 433 U.S. 350, 53 L.Ed.2d 810, 97 S.Ct. 2691. In the Committee Commentary to Canon 2 of the Code adopted by the Supreme Court of Illinois effective July 1, 1980, it is stated:

"Acceptance of these principles leads to the conclusion that opportunities for lawyer advertising should be substantial. Because the lawyer's first amendment rights, the consumer's right to know, and the individual's access to legal services are all involved, restrictions on lawyer advertising should be imposed only to the extent they can be specifically justified to protect the public.

Accordingly, the present Code does not attempt to list exhaustively the type of information which may be included in advertisements. Nor does it contain detailed and specific prohibitions. Rather, it places primary emphasis, in Rule 2-101(b) on the requirement that any advertisement, regardless of format or content, be true, complete and not misleading."

Rule 2-101 is directed, primarily, to direct advertising by lawyers, and permits direct advertising to go far beyond the type of indirect advertising involved in Question No. 1.

However, even before the Supreme Court decision on lawyer advertising, and going back to old Canon 40 which was adopted in 1928, publication of articles by lawyers was permitted. Canon 40 provided:

"A lawyer may with propriety write articles for publications in which he gives information upon the law; but he should not accept employment from such publications to advise inquirers in respect to their individual rights."

In ISBA Opinion No. 141, dated June 11, 1957, this Committee approved the publication of articles on legal subjects by lawyers with the cautionary statements that both the attorney and the publisher should exercise caution that the matter is free from advertising features, that the lawyer should not answer inquiries that come to him through his newspaper column, and that neither the lawyer's experience nor special conclusion should be set forth in the articles or in any of the newspaper publisher's comment on the same. Now, of course, since the Bates decision the cautionary statements as to the indirect advertising aspects are inapposite.

Considering this history and the considerable extent and leeway to which direct advertising is now permitted under Rule 2-101, the Committee is of the opinion that the indirect form of advertising involved in the lawyer cooperating in the publication of the newspaper article here involved, is not objectionable. Thus, the answer to the first question is that there is no violation of the Code of Professional Responsibility by the lawyer involved.

Question No. 2 also involves an indirect form of advertising.

ISBA Opinion No. 266, dated June 29, 1965, dealt with the release by the Illinois Institute of Continuing Legal Education of news stories concerning programs sponsored by it in which the names of local attorneys, judges and law professors who attended and participated in the programs would appear. In that opinion, we referred to then existing Canon 27, ISBA Opinion No. 201 and ABA Formal Opinion 179 and concluded that this type of indirect advertising was not prohibited.

The only distinction from the facts in that opinion and the present question is that instead of the information being released by IICLE it is released directly to the newspapers by the lawyers involved. We do not think that this constitutes a sufficient distinction to alter our previous conclusion. The concerns expressed in Opinion No. 266 by the Committee as to solicitation and advertising by a particular lawyer have been alleviated by the relaxed prohibitions against direct advertising as we have discussed above.

The answer, therefore, to Question No. 2 is that the Committee does not feel that the release by individual lawyers of information to the newspaper concerning their attendance at continuing legal education seminars is prohibited by the Code of Professional Responsibility. (Although it recognizes that release of such information may be looked upon by many as being in bad taste.)

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