

Opinion 329
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ADVERTISING - LEGAL ARTICLES AND ATTORNEY IDENTIFICATION IN TRADE JOURNALS

An attorney who edits a bar journal or who writes legal articles for a trade journal may be identified by name only and may not ethically permit the publication of his picture, his identification as an attorney, biographical data showing his legal qualifications, his firm connection or address.

Canons 37, 24. ABA Canons 40, 27.

CASE 1:

An attorney desires to conduct a business of publishing a monthly trade journal which will contain articles of general interest to real estate brokers on various legal subjects. The publication will not answer inquiries with respect to individual rights and will carry a notice to the effect that each reader should consult his own attorney regarding his personal legal problems. The articles will be dignified and instructive treatments of the law, its history and philosophy. The editor will be an attorney.

QUESTIONS

1. May the editor identify himself in the publication as an attorney at law?
2. May the editor include in the publication a brief biographical sketch, showing his education, degrees and firm membership?
3. May the author of legal material in such journal permit the publishing firm to identify him as an attorney at law in its advertising thereof?
4. May the editor permit the publishing firm to use a brief biographical sketch of him (presumably including his identity and qualifications as an attorney) in its advertisements seeking subscribers?

CASE 2:

An attorney is asked to write a column of general nature on legal subjects for a trade journal. The column will not answer inquiries with respect to individual rights and will be a dignified and instructive treatment of the law, its history and philosophy. The editor of the trade journal desires to publish at the head of the column a picture of the attorney, his name and the fact that he is an attorney.

QUESTION

May the attorney ethically permit the publication of his picture, name and identification as an attorney?

OPINION

Texas Canon 37 and ABA Canon 40 expressly provide that a lawyer may write articles for publication in lay 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. Thus, it appears that the proposed articles and column are within permissible limits. See Texas Opinion 90 (November, 1953), adopting ABA Opinion 92 (May 2, 1933), and ABA Opinion 162 (August 22, 1936).

The ethical questions relate to advertising.

In Case 1 the attorney proposes to engage in a business of publishing a monthly trade journal. In Opinion 91 (November, 1953) we ruled that an attorney may engage in any business and advertise that business so long as he does not directly or indirectly advertise in his professional capacity. We further ruled in Opinion 194 (March, 1959), modified somewhat in Opinion 249 (June, 1962), that an attorney who has withdrawn from law practice and is engaged entirely in other business may advertise in connection with that business and show as one of his qualifications therefor that he is a licensed attorney. The present case, however, does not fall within the narrow confines of those opinions. On the contrary, the identification of the editor and/or author as an attorney at law the publication of biographical data and his identification as a member of a law firm would be calculated to advertise the attorney in his professional capacity and therefore is prohibited by Texas Canon 24 and ABA Canon 27. All questions are answered "no." (8-0.)

Case 2 presents a somewhat closer question. The attorney himself is not involved in the business of publishing the trade journal and there is thus less likelihood of direct advertising, but the majority of the Committee are of the opinion that the publication of the author's picture and his designation as an attorney at law in the trade journal would violate Texas Canon 27 and ABA Canon 27.

It is common practice in legal journals for an attorney-author to be identified by name, profession, picture and even firm name, and in ABA Opinion 141 (May 9, 1935) the use of an attorney's picture in connection with his legal article in a law fraternity's journal was expressly approved upon the ground that the picture was not used for advertising but rather to create interest in legal subjects and friendly relationships among members of the fraternity. We approve that reasoning and see no danger of either direct or indirect solicitation in the publication of pictures, biographical data, etc., within the bounds of good taste, in connection with articles appearing in legal journals.

We recognize that in lay trade journals also, attorney-authors are frequently identified by name, profession and picture, and two members of the Committee feel that so long as the attorney-author is not identified by firm name or address the "solicitation" aspect is too remote and inconsequential to justify condemnation. Citing 39 A.B.A.J. 301, one member says "There is no real merit in disciplining a lawyer for sneezing or blowing his nose in public." The majority of the Committee, however, feel that trade journals and other lay publications stand on different ground from legal journals and while lay readers no doubt are interested in the identification and qualifications of authors whose works appear therein, there is a real likelihood of indirect (if not direct) solicitation which outweighs the interest of the lay readers. ABA Informal Decision 743 (March 12, 1964) holds that an attorney who writes for a trade journal should authorize only the use of his name and not his picture or office address. We approve that opinion and rule that the identification of an attorney-author in a trade journal or other lay publication should be limited to name only. (6-2.)