
E-79-5 “Ask the Lawyer” column

Question

May a lawyer prepare and disseminate an “Ask the Lawyer” column?

Opinion

An important function of the legal profession is to educate laymen to recognize their legal problems, for such problems often are not self-revealing (EC 2-1, 2-2). Lawyers may prepare professional articles for lay publications, but in so doing they must shun personal publicity (EC 2-2).

Since a slight change in fact situations is often material, the columnist should not appear to give a general solution to what seem to be individual problems (EC 2-5). The layman should be told to consult a lawyer about his individual problem.

The motivation of the lawyer in disseminating such a column is the quintessential element. The activity is proper only if the lawyer is motivated by the desire to assist one who does not realize that he may have a particular legal problem or who does not know of his legal rights or obligations (EC 2-3).

The motivation of the lawyer-columnist is subjective (EC 2-4). At present, no universally accepted means exists to go into a person’s mind to determine what that motivation is. Therefore, motivation can be judged only objectively. If the columnist, as a result of publication, were to accept professional employment or compensation or any other benefit, he would be suspect under any fair objective test (EC 2-4).

Disciplinary Rule 2-104, except for one subsection, lists permissive conduct. The exception is DR 2-104(A)(4), under which public dissemination by a lawyer does not prevent his accepting employment as a result of the advice given “so long as he does not emphasize his own professional experiences or reputation and does not undertake to give individual advice.” The foregoing statements are guidelines set forth in the Code of Professional Responsibility.

The Rule and Comment of the Wisconsin Supreme Court in its order of April 30, 1979, should be considered. What is “false, misleading, or deceptive” gives

no problem in interpretation. What may be regarded as “unfair” can be decided often only by making a determination as to motivation. This committee has no basis for making a finding as to motivation in the present instance.

In view of the Comment of the Court’s order of April 30, 1979, that “it is misleading or deceptive to advertise that a lawyer is a specialist in a particular field or practice other than the historically recognized special fields of patent, trademark, and admiralty law,” the lawyer-columnist must avoid any suggestion whereby a layman reader may conclude that the lawyer is a specialist.

The prime purpose of advertising by a lawyer is to obtain more and better clients. The courts assume that as a result of advertising, properly conducted under the restrictions laid down, the public will be served better than by non-advertising. Time will prove the validity or falsity of this assumption. Presumably some laymen readers of the “Ask the Lawyer” column will get in touch with the author, and a lawyer-client relationship will be the result. The lawyer-columnist may publish his name and address as part of the column, to allow laymen to ask questions about the published advice and for such other purposes as those which laymen find to their advantage.

Conclusion

A lawyer may prepare and disseminate an “Ask the Lawyer” column in accordance with the terms of this opinion.