Utah Ethics Opinions

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98-15. USB EAOC Opinion No. 98-15

Utah State Bar

Ethics Advisory Opinion Committee

Opinion No. 98-15

Approved January 29, 1999

Issue: May a lawyer, who identifies himself as a lawyer, write an article or letter to the editor for a non-legal publication on (a) a legal subject or (b) a non-legal subject?

Opinion: Generally, a lawyer, identified as a lawyer, may write for publication about any subject matter, subject to certain limitations such as compliance with Rule 3.6 on trial publicity.

Background: The Ethics Advisory Opinion Committee has been asked to consider whether a lawyer, who identifies himself as a lawyer, may ethically publish articles and letters to the editor in newspapers, magazines and other publications. This request arises, in part, because of a 1979 Utah Ethics Advisory Opinion, which declared that "It is improper for an attorney to identify himself as an attorney in a letter to the editor." (fn1)

In a short opinion that recites a portion of a 1962 informal ABA opinion, this Committee appears to have concluded that an attorney may only publish a letter to the editor "express[ing] a view point on public matters if, of course, he doesn't mention the fact that he is a lawyer." (fn2)

The foundation for this restriction is somewhat unclear, but appears to be partially grounded in Canon 27 of the Code of Professional Responsibility, which proscribed lawyers' advertising. **Discussion:** We find that the conclusion and the apparent reasoning behind Opinion 54 are not consistent with the current Utah Rules of Professional Conduct (fn3) and the case law that has addressed the First Amendment rights of lawyers and law firms. (fn4)

Turning first to the Rules of Professional Conduct, we find no rule that directly proscribes either a lawyer's letter to the editor or an article written on any subject-legal or otherwise. Nor do we find anything in the rules that restricts the lawyer from identifying himself as a lawyer. We do note that there are some limitations on communicating through the media about currently pending litigation of a lawyer's client, and we assume here that the letters and articles in question are not targeted toward or about the lawyer's client's legal affairs (fn5) or otherwise designed "to embarrass, delay or burden a third person" when representing a client. (fn6)

The "advertising rules," Rules 7.1 through 7.5, do not deal directly with the subject of lawyers' letters and articles, and we can find no other rules that would have direct application. Perhaps more fundamentally, however, a lawyer should be generally free to communicate about matters of interest, legal or otherwise, and not be constrained to hide his identity as a lawyer. To the extent that Opinion No. 54 was based on the notion that identifying oneself as a lawyer in a letter to the editor or other publication is a form of advertising, the application of the First Amendment in such cases as *Bates* and the replacement of the Code of Professional Responsibility by the Rules of Professional Conduct has swept this aside.

As the New Jersey Supreme Court Committee on Attorney Advertising recently concluded, "There is nothing inherently improper about the publication of a column discussing a legal topic." (fn7) We agree, and we further conclude that the identification of the author as a lawyer is not inherently improper. The principle is that lawyers' communications are generally protected by the First Amendment, subject to the restriction that they not be false or misleading. Writing letters and articles about matters of interest does not constitute improper or unethical behavior. (fn8)

Conclusion: Subject to the limitations discussed in the body of this Opinion, it is not unethical under the Utah Rules of Professional Conduct for a lawyer, identified as a lawyer, to publish articles or write a letter to the editor about subjects of interest, both legal and non-legal. Accordingly, Ethics Advisory Opinion No. 54, which prohibited professional identification of such publications, is overruled.

Footnotes

1. Utah Ethics Advisory Op. No. 54 (Utah St. Bar April 12, 1979).

2. ABA Comm. on Professional Ethics, Informal Op. C-473 (1962).

3. The current Utah Rules of Professional Conduct replaced the Utah Code of Professional Responsibility (the canons and ethical considerations) on January 1, 1988.

4. *See, e.g., Bates v. State Bar of Arizona*, 433 U.S. 350

(1977).

5. *See, e.g.* , Utah Rules of Professional Conduct 3.6, Trial Publicity; *but see Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991).

6. Utah Rules of Professional Conduct 4.4.

7. N.J. Att'y Advertising Comm. Op. 23, 1997 WL 612281, 149 N.J.L.J. 1298 (1997). In this case, the article was accompanied by information about the attorney and a solicitation of business, and the New Jersey committee required that the word "advertisement" appear with the column. In our Opinion, we address only the non-solicitational communications that a lawyer might publish in a variety of media. *See also* ABA/BNA Law. Manual on Prof. Conduct, 81:504 (1989) ("canned" columns that combine lawyer advertising with general information about a legal topic), cited in Annot. Model Rules of Professional Conduct (ABA 3d ed. 1996).

8. Other states have reached similar conclusions. *See* N.J. Att'y Advertising Comm. Op. 23, *id.;* Tex. Ethics Op. 425, 1985 WL 57297 (Tex. Sup. Ct. Prof. Ethics Comm.); Ill. Ethics Adv. Op. 763, 1982 WL 198398 (Ill. St. Bar Ass'n).

Rules Cited: