

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-78
Issued: November 1973

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), especially Rules 7.01-7.50 and the Attorneys' Advertising Commission Regulations, before relying on this opinion.

Question: May an attorney serving as county judge write a series of articles for a local newspaper discussing generally probate and estate law and procedure?

Answer: Yes.

References: DR 2-101(A)

OPINION

An attorney serving as county judge has been asked by a local newspaper to write a series of articles containing a general discussion of probate and estate law and procedure. He inquires of the Committee whether this may ethically be done.

Wise, in his text on Legal Ethics, page 156, writes that the principal factors to be guarded against when an attorney writes, speaks or makes other contact with the general public are the improper advertisement of the attorney, the giving of specific advice on actual individual legal problems without the relationship of client and attorney, and enabling the layman publisher, radio or TV station or sponsor of a program to give legal advice. DR 2-101(A) addresses itself to the problem in this language:

A lawyer shall not prepare, cause to be prepared, use, or participate in the use of, any form of public communication that contains professionally self-laudatory statements calculated to attract lay clients; as used herein, "public communication" includes, but is not limited to communication by means of television, radio, motion picture, newspaper, magazine, or book.

Former Canon 40, in effect prior to adoption of the new Code of Professional Responsibility, permitted an attorney to write articles for publication in which he gave information upon the law but prohibited the use of publications to advise inquirers in respect to their individual rights. This distinction has repeatedly been interpreted and upheld in the opinions of the ABA Committee on Professional Ethics and is still in effect.

Applying these rules to the present inquiry, the Committee believes that an attorney motivated by a sincere desire to render service may, so long as it is done in good taste and not in an effort to advertise himself, write articles of a general nature on probate and estate law and procedure for publication. At the same time, it is clear that any effort to discuss individual legal problems cannot be condoned.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.