

You have presented a hypothetical situation in which an attorney holds himself out by letterhead and otherwise as possessed of special expertise in a particular industry. At some point, the principal trade association serving that industry terminates the employment of one of its employees. You further indicate that the attorney never represented the association and had no access to any legal advice the association may have received from its in-house or outside attorneys nor any information concerning the decision-making process and the relevant facts and circumstances that led the association to end its employment relationship with the employee. Finally, you have informed the committee that the attorney published an article in the industry trade press stating, among other things, that the association "fired [the employee] because people grossly misunderstood what trade association activities violate the antitrust laws."

You have asked the Committee to opine whether, under the facts of the inquiry, the conduct in question could be construed as false, fraudulent, misleading, or deceptive under the Code of Professional Responsibility.

The appropriate and controlling disciplinary rules related to your inquiry are DR:2-101(A) and DR:2-102(A), which provide, respectively, that a lawyer shall not use or participate in the use of any form of public communication or in the use of a professional notice or device if such communication, notice or device contains a false, fraudulent, misleading, or deceptive statement or claim.

The Committee has previously opined that it is not per se unethical for an attorney to advertise that he specializes in a certain area of law so long as the advertisement does not say that he is a recognized or certified specialist. (See LE Op. 923) Your inquiry did not indicate how the attorney held himself out by letterhead as being "possessed of special expertise in a particular industry" nor did your inquiry indicate whether or not the attorney advertised himself as being a recognized or certified specialist. The Committee opines that, unless the attorney held himself out as possessing special expertise in the particular industry when, in fact, he had no such expertise, such advertisement would not be considered false, fraudulent, misleading or deceptive, or violative of DR:2-102(A). (See also EC:2-16.)

The Committee believes that a lawyer should refrain from making statements in public communications which reflect on another attorney or firm's fitness to practice law, which are merely self-laudatory, or which are not supported by factual assertions. Such statements, if made solely to garner further business, may mislead the layperson to whom they are directed and therefore undermine the public's confidence in the legal system. (See LE Op. 1297, LE Op. 1321, LE Op. 1406)

The Committee is of the opinion that the publication of an article in which an attorney states his opinion as to a particular set of circumstances is not per se improper. (See LE

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Op. 1336) However, the Committee recognizes that assessing the motivation underlying the attorney article which stated the rationale for the employee's termination requires a factual determination beyond the purview of this committee. If such a factual determination resulted in a finding that, as you have posited, the article was published for the purpose of solicitation of legal employment and with the intent to "have people believe that [the attorney] had full knowledge of the relevant facts and circumstances concerning the association's actions" when, in fact, he had no such information, such statements and publications would then be misleading and violative of DR:2-101 (A). (See also EC:2-10 and EC:2-11.)