Advertisement and the Bar

Disciplinary Rule 2-101 of the American Bar Association's *Code of Professional Responsibility* states, "A lawyer shall not prepare, use, or participate in the use of any form of public communication that contains professionally self-laudatory statements calculated to attract lay clients . . . ." Thus, it would seem that advertising procured, instigated, or acquiesced in by an attorney is proscribed conduct. But this statement of an axiomatic norm is deceptively fundamental and misleadingly general. There are many questions that must be answered before this becomes a useable standard. What was the historical rationale for the ban on advertising? Is that rationale still valid for today's pluralistic legal profession? What specific acts are proscribed? What tests are employed by the bar and courts to determine when an attorney has crossed the line into seeking, rather than accepting, professional employment? The case of Melvin Belli is a convenient and fairly representative starting point for analysis and appraisal of the problem set in motion by the bar's condemnation of advertising.2

Melvin Belli, subsequent to his entrance to the California Bar in 1933, gained a considerable reputation as a trial lawyer. Belli

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1. ABA, *Code of Professional Responsibility* [hereinafter cited as ABA Code], Disciplinary Rule 2-101 [hereinafter cited as DR].
2. *ABA Committee on Professional Ethics, Opinions*, [hereinafter cited as ABA Opinions] No. 291 (1956) (bar association referral services); *ABA Opinions*, No. 123 (1934) (law lists); ABA Committee on Professional Ethics, *Informal Opinions*, [hereinafter cited as ABA Informal Opinions] No. 764 (1964) (bar association referral services); *The Association of the Bar of the City of New York, Selected Opinions of the Committee on Professional Ethics* [hereinafter cited as N.Y. City Opinions], No. 710 (1947) (law lists); *N.Y. City Opinions*, Nos. 596, 91, 59 (1941, 1929, 1927) (free legal services from non-profit legal aid organization); *American Bar Association National Conference on Prepaid Legal Services* (1972) (group legal services, prepaid legal services, or legal insurance).
simultaneously engaged in the careers of public speaker, author, and seminar lecturer for which he received handsome considerations. Belli pursued these careers relying primarily on his agent, Richard Fulton, of Richard Fulton Incorporated, to procure Belli’s engagement with parties interested in hiring celebrities for lecture dates. As Belli’s agent, Fulton solicited publicity for Belli’s engagements by arranging television and radio talk-show appearances for Belli, distributing thousands of brochures throughout the United States and Canada, arranging advertisements promoting a brand of scotch whiskey by Belli’s endorsement, and sending letters to *Time*, *Newsweek*, and the *New York Times* announcing the twentieth anniversary of Belli’s seminars. Belli himself displayed posters and flyers describing and announcing the lecture dates. The state bar on its own motion instigated proceedings against Belli for willful violation of the *Rules of Professional Conduct* proscribing advertisement and solicitation by attorneys. On review of the recommendation by the state bar’s Disciplinary Board that Belli be suspended from the practice of law for one year, the Supreme Court of California held that the one year suspension was “patently excessive” and that a 30-day suspension was the “appropriate sanction.” While not approving such acts by Belli, the court found that Fulton’s distribution of lecture brochures, his efforts to arrange media appearances for Belli, and the display and distribution of posters and flyers as promotional material were not proper bases for discipline. However, the court found Fulton’s correspondence with newspapers objectionable as the letters contained language which was “primarily directed at expanding Belli’s law practice.” Advertising scotch whiskey was also an acceptable basis for suspension because such advertisements were not related to Belli’s legitimate seminar activities, and were in fact self-laudatory.³

The reasons extended for the bar’s persistent condemnation of commercialization of the profession through advertising are diverse. According to Drinker,⁴ in the early days of the bar the membership was composed of those “who did not have to worry about earning their keep, and who traditionally looked down on all forms of trade and the competitive spirit characteristic thereof.”⁵ Thus, one traditional reason for the prohibition against advertisement is the ill

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4. H.S. Drinker, *LEGAL ETHICS* (1953). See also ABA OPINIONS, No. 293 (1957); ABA OPINIONS, No. 276 (1947) (discussion of rationale for ban on advertising).
effect of commercialism.6 One of these ill effects is that the public “would be likely to form a very unjust estimate of the profession at large” because “the most persistent and adroit self-advertiser would be the most successful.”7 An additional suggested evil of commercialism and its resultant unfair competition is that devotion to monetary gain would take precedence over unselfish devotion to the client. This change in motivation, it is said, would then result in disrespect for the lawyer followed by the development of a general disrespect for the entire judicial system on the part of the public. However, it is common knowledge that the profession’s unselfish devotion to its clientele and its own interest in monetary incentives are not necessarily mutually exclusive. It is also unrealistic to think that a proscription of advertisement defeats unfair competition because unfair competition already exists as the established attorneys naturally possess an unfair advantage over the younger, unestablished lawyers.9 The rationale condemning commercialism arose from a time in history in which lawyers were not dependent on their profession for livelihood and when attorneys were a select group that could afford altruism and philanthropy.10 To restate, from this background comes the basic feeling that the promotion of justice is subordinated by advertisements, which have the effect of emphasizing economic goals, and that such a change of emphasis is harmful to a proper attorney-client relationship.11

It is also contended that advertisement would stir up litigation.12 However, the function of the judicial system is to hear all valid claims regardless of their origin. Diseconomy of government through crowded court calendars is no reason to deny litigants access to the courts.13 Yet it is claimed that attorneys who make outra-

6. See In re L.R., 7 N.J. 390, 81 A.2d 725, 726 (1951) (Advertising “throws the practice of law into a commercial setting which is wholly foreign to the concept of a correct practice and which has been soundly condemned.”).
9. Id.
12. See ABA Opinions, No. 73 (1932); Annot., 9 A.L.R. 1500 (1920); Annot., 55 A.L.R. 1313 (1928).
geous promises may have to resort to unfair methods to keep their unrealistic promises.¹⁴ But problems of corruption and fraud, like the inefficiencies in court administration, are independent problems not causally related to advertisement and should be met regardless of the effect advertisement might produce.¹⁵

Advertising is alleged to bring harm to clients in that the economic incentive would cause the attorney to desire a rapid turnover of cases for larger profits. But this is based on the erroneous assumption that the attorney would subordinate his clients' interests to his own once freed from the Code of Professional Responsibility. Modern theories on deterrence suggest that the presence of the prohibition may simply make those attorneys who would be unethical anyway become more crafty.¹⁶ It is not logical to conclude that in absence of the prohibition clients would be over-reached, overcharged, and under-represented.¹⁷

Another theory supporting the ban on advertising is that it subjects defendants to unnecessary costs to defend unmeritorious claims. However, this argument is mitigated by the fact that many claims are procured on a contingent fee basis and would not be brought if such claims did not merit presentation to the courts.¹⁸

It is also claimed that public employees, such as hospital employees, ambulance drivers, and police, could be corrupted by being paid by lawyers for information, yet there is no reason to believe that advertising is causally connected to that distinct problem area.¹⁹

The conclusion that the ban on advertisement should be reconsidered is compelling in that: (1) the ban is frequently violated, (2) the problem is the subject of a disproportionate number of bar opinions, (3) there have already been relaxations by the bar in the areas of referral services, law lists, and advertisements by the organized bar,²⁰ (4) frequent litigation arises from the problem, and (5) many authorities who favor traditional rules oppose the ban on advertisements.²¹ It has been suggested, for example, that much could be

¹⁴ VAND. L. REV., supra note note 10.
¹⁵ U. CHI. L. REV., supra note 11.
¹⁶ CATH. U.L. REV., supra note 8.
¹⁷ U. CHI. L. REV., supra note 11.
¹⁸ Id.
¹⁹ Id.
²⁰ VAND. L. REV., supra note 10.
²¹ U. CHI. L. REV., supra note 11.
gained, and the evils enumerated above could be at least partially avoided, by increased advertisement by the organized bar. Such publicity would benefit the public by educating the layman as to his legal rights, and would thus also benefit the profession, without appearing to be purely commercial advertising. Since the rationales for the ban on individual advertising do not generally apply to advertisement by the organized bar, such activity should be palatable.\(^2\)

The ABA rule against advertising was adopted in 1908, redrafted in 1937, 1940, 1942, 1943, 1951, and 1963.\(^3\) At the present

\(^{22}\) 19 ALA. L. REV. 421 (1967). See ABA OPINIONS, No. 179 (1938) (radio advertisement by bar); ABA OPINIONS, No. 121 (1934) (local bar advertisement in newspaper informing public as to where to see a lawyer).

\(^{23}\) ABA CANONS OF PROFESSIONAL ETHICS No. 27:

Advertising, Direct, or Indirect. It is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations. Indirect advertisements for professional employment such as furnishing or inspiring newspaper comments, or procuring his photograph to be published in connection with causes in which the lawyer has been or is engaged or concerning the matter of their conduct, the magnitude of the interest involved, the importance of the lawyer's position, and all other like self-laudation, offend the traditions and lower the tone of our profession and are reprehensible; but the customary use of simple professional cards is not improper.

Publication in reputable law lists in a manner consistent with the standards of conduct imposed by these canons of brief biographical and informative data is permissible. Such data must not be misleading and may include only a statement of the lawyer's name and the names of his professional associates; addresses, telephone numbers, cable addresses; branches of the profession practiced; date and place of birth and admission to the bar; schools attended, with dates of graduation, degrees and other educational distinctions; public or quasi-public offices; posts of honor; legal authorships; legal teaching positions; memberships and offices in bar associations and committees thereof, in legal and scientific societies and legal fraternities; foreign language ability; the fact of listings in other reputable law lists; the names and addresses of references; and, with their written consent, the names of clients regularly represented. A certificate of compliance with the Rules and Standards issued by the Standing Committee on Law Lists may be treated as evidence that such list is reputable.

It is not improper for a lawyer who is admitted to practice as a proctor in admiralty to use that designation on his letterhead or shingle or for a lawyer who has complied with the statutory requirements of admission to practice before the patent office, to use the designation "patent attorney" or "patent lawyer" or "trademark attorney" or "trademark lawyer" or any combination of those terms.
time the ABA proscription against advertising is embodied in Canon 2 of the ABA Code of Professional Responsibility. Canon 2 expresses the need to make legal services fully available to the public in EC 2-1. But in doing so the attorney should "shun personal publicity" as motivations of personal benefit and personal publicity are prohibited by EC 2-2 and EC 2-3. The stated rationales for the ban on advertising are presented in EC 2-9. These include the dangers of misleading the layman by extravagant claims that produce unrealistic expectations which when frustrated will incite distrust of the profession. Public confidence in our legal system is the purpose of the ban. The exceptions to the ban are the traditional

24. ABA Code, Ethical Consideration 2-1 [hereinafter cited as EC]: The need of members of the public for legal services is met only if they recognize their legal problems, appreciate the importance of seeking assistance, and are able to obtain the services of acceptable legal counsel. Hence, important functions of the legal profession are to educate laymen to recognize their problems, to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available.

25. ABA Code, EC 2-2: The legal profession should assist laymen to recognize legal problems because such problems may not be self-revealing and often are not timely noticed. Therefore, lawyers acting under proper auspices should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise. Such educational programs should be motivated by a desire to benefit the public rather than to obtain publicity or employment for particular lawyers. Examples of permissible activities include preparation of institutional advertisements and professional articles for law publications and participation in seminars, lectures, and civic programs. But a lawyer who participates in such activities should shun personal publicity.

ABA Code, EC 2-3: Whether a lawyer acts properly in volunteering advice to a layman to seek legal services depends upon the circumstances. The giving of advice that one should take legal action could well be in fulfillment of the duty of the legal profession to assist laymen in recognizing legal problems. The advice is proper only if motivated by a desire to protect one who does not recognize that he may have legal problems or who is ignorant of his legal rights or obligations. Hence, the advice is improper if motivated by a desire to obtain personal benefit, secure personal publicity, or cause litigation to be brought merely to harass or injure another. Obviously, a lawyer should not contact a nonclient, directly or indirectly, for the purpose of being retained to represent him for compensation.

26. ABA Code, EC 2-9:
ones, and include telephone directory listings, office building directory listings, letterheads, and professional cards. Disciplinary Rule 2-101 reiterates and delineates the general ban and is followed by an explanation of the exceptions to the ban in DR 2-102.

The Canon has sustained attack on constitutional grounds, as well as attack on certain statutory grounds. It is established that unethical advertisement is a ground for censure or suspension regardless of whether the act in question violated a penal statute directed at unethical conduct. The canons "are as obligatory on [the attorney] as if cast in statutory form, as indeed they are in large part in many states."

As a preface to a discussion of instances of prohibited advertising it should be noted that agency concepts may be important in

The traditional ban against advertising by lawyers, which is subject to certain limited exceptions, is rooted in the public interest. Competitive advertising would encourage extravagant, artful, self-laudatory brashness in seeking business and thus could mislead the layman. Furthermore, it would inevitably produce unrealistic expectations in particular cases and bring about distrust of the law and lawyers. Thus, public confidence in our legal system would be impaired by such advertisements of professional services. The attorney-client relationship is personal and unique and should not be established as the result of pressures and deceptions. History has demonstrated that public confidence in the legal system is best preserved by strict, self-imposed controls over, rather than by unlimited advertising.

27. ABA Code, EC 2-10:

Methods of advertising that are subject to the objections stated above should be and are prohibited. However, the Disciplinary Rules recognize the value of giving assistance in the selection process through forms of advertising that furnish identification of a lawyer while avoiding such objections. For example, a lawyer may be identified in the classified section of the telephone directory, in the office building directory, and on his letterhead and professional card. But at all times the permitted notices should be dignified and accurate.


29. Givins v. Tampa Bar Ass'n, 125 Fla. 294, 169 So. 744 (1936) (Florida statute prohibiting attorneys from advertising without license and signing full name to advertisement, did not by negative inference approve advertising by licensed attorneys—the legislature recognizes the courts' power to regulate in this area.)


evaluating the conduct of an attorney. As in *Belli* where Fulton played a major role, an agency relationship may implicate an attorney in proscribed activity.  


33. Since most bar opinions deal with an issue prospectively the rulings are usually conservative and protective of the canons, while a consideration in retrospect by a court will necessarily be less strict on the censured party, thus there may be a disparity between bar opinions and litigated resolutions of the same or similar factual issues.


36. *Millsberg v. State Bar of California*, 6 Cal. 3d 65, 490 P.2d 543, 98 Cal. Rptr. 223 (1971) (attorney retained by a rental housing association to give free advice to its members held to be under an affirmative duty to stop an advertisement giving out that information in an association publication). *See also* ABA Opinions, No. 140 (1935) (committee found it highly improbable that picture could have been taken without the attorney's consent). ABA Opinions, No. 62 (1932) (attorney had a duty to require the publisher to discontinue an unsolicited ad containing the attorney's picture).

37. N.Y. City Opinions, No. 520 (1939).
to solicit divorce litigation. In In re Tall, a newspaper entry calling attention to a "Divorce Mecca" and another advertisement of a pamphlet entitled "Synopsis of Divorce Law" were held to be contrary to the proscription against advertising. The court stated, "Comment is unnecessary. The facts speak for themselves. Respondent acted in the matter without considering his duty and oath as an attorney." And in In re Cohen, where an attorney advertised free legal advice in matrimonial matters, the court commented, "It has always been regarded as contrary to sound public policy for an attorney-at-law to foment litigation or to instigate lawsuits [for divorce]."

Of the four grounds asserted for censure in Belli, commercial endorsements and letters announcing a purportedly newsworthy event were the two grounds upon which censure was sustained. As in Belli, there is some question as to whether, and to what extent, an attorney may endorse a commercial product. New York City Opinion 528 held that it was a matter of taste, not ethics, as to whether an attorney should allow his name to be used to endorse a book, but the use of an entire testimonial letter with the attorney’s telephone and business address was unethical because it could give the impression that the lawyer was expert in the area. Also in ABA Informal Opinion 920 it was held that an attorney could not hold himself out as a specialist in a field in advertisements incident to the sale of a book authored by the attorney, and the author could only be referred to as "an attorney." In ABA Opinion 76, a firm was denied a request to write a letter in praise of its client, an insurance company, for circulation among the client’s prospective customers. However, ABA Informal Opinion 788 allowed an insur-
ance company to run an advertisement in national magazines containing pictures of several members of a law firm which had insured the lives of its principal partners with the company. The Committee reasoned the firm had not solicited the publicity, nor would any compensation be paid in connection with the advertisement.\textsuperscript{46}

In another area, newspaper articles and pamphlets discussing a particular client's litigation (endorsing a particular cause) may be prohibited if laudatory of the attorney. Such exploitation of the attorney by the client for the client's cause is usually condemned.\textsuperscript{47} (In the above case the client could be viewed as the attorney's agent.) In New York County Opinion 396 an article in a trade magazine concerning recent court decisions, submitted and written by an attorney, was not prohibited.\textsuperscript{48} Yet it is usually unethical for a lawyer to acquiesce in newspaper comments or to pose for pictures for a story about a client's suit.\textsuperscript{49} The attorney may be censured for preparing newspaper announcements expressing gratitude to a group of people relating to a specific case if the article is even by implication self-laudatory.\textsuperscript{50}

An attorney may not pay to have his picture published in a newspaper section for prominent people,\textsuperscript{51} nor may he pay to have his biography published along with other prominent persons in the community.\textsuperscript{52}

The propriety of acquiescence or cooperation in preparing news stories and magazine articles was the second ground for censure sustained in \textit{Belli} in that Fulton's letter to several newspapers was found to be primarily intended to publicize his principal.\textsuperscript{53} Two note-worthy cases in this area are \textit{In re Connelly},\textsuperscript{54} in which a law firm was censured for participation and acquiescence in the publication of a magazine article covering the firm's corporate law prac-

\textsuperscript{46} ABA Informal Opinions, No. 788 (1964).
\textsuperscript{47} N.Y. City Opinions, No. 426 (1937).
\textsuperscript{48} N.Y. County Opinions, No. 396 (1951).
\textsuperscript{49} ABA Opinions, No. 140 (1935). See ABA Opinions, No. 42 (1931) (divorce suit).
\textsuperscript{51} ABA Opinions, No. 43 (1931).
\textsuperscript{52} ABA Opinions, No. 207 (1940). These opinions should be compared with those allowing many of the same activities if in connection with an attorney's political candidacy or political endorsements. See ABA Informal Opinions, Nos. 825, 795, 818, 748 (1965, 1965, 1965, 1964).
tice, and State ex rel. Florida Bar v. Nichols in which the court did not censure an attorney who was approached by a reputable newspaper which prepared a story about the attorney’s law practice and the grand opening of its newly constructed office building. The standards used in these cases will be discussed later. ABA Informal Opinion 552 presents a situation in which an attorney was not allowed to cooperate in preparing a feature article about various lawyers and firms. The Committee held that the propriety of the articles would depend upon the “motives of the cooperating lawyer, the subject matter of the article, its purpose and tone.” Tone seems to indicate an objective standard, while “purpose” indicates a subjective intent to publicize is required. It may also be required that the attorney review the article for laudatory comments before it is published, but after an unsolicited article has been published the lawyer need disclaim publicly only those statements which are so blatant that they may appear to be inspired by the attorney in a quest for publicity.

Attorneys may sometimes be requested to author a question and answer column for a periodical in which laymen seek legal advice. Bar opinions have held that since the layman could not present his problems completely in written question form, the attorney’s answer may not be on point and in fact may be detrimental to the layman. The attorney may write articles discussing legal issues, but should refrain from advising laymen of their individual rights. Another reason for prohibiting individualized advice is that such advice would constitute rendering professional aid through a paid intermediary.

Belli’s censure was not sustained for distribution of brochures and pamphlets advertising his seminars. This is consistent with the holding in Palmquist v. State Bar of California which condoned pamphlets authored by an attorney and distributed among lawyers, judges, doctors, and insurance brokers when found to be primarily informative and educational, and not willful advertising. Bar opin-

55. 151 So. 2d 257 (Fla. 1963).
56. ABA INFORMAL OPINIONS, No. 552 (1962).
58. N.Y. CITY OPINIONS, No. 308 (1934). See ABA CODE, EC 2-5.
60. N.Y. CITY OPINIONS, No. 666 (1944). See also N.Y. COUNTY OPINIONS, No. 29 (1913) (opinion withheld because activity may have constituted illegal practice of law under a N.Y. penal statute).
ions have allowed other pamphlets authored by lawyers to be distributed free or sold to laymen when the subject covered was insurance law, but disallowed circulation of a book entitled So You're Going to be a Witness! Distribution of a booklet commemorating the 100th anniversary of a New York law firm which contained pictures and biographical sketches of the partners was allowed, yet a request by an attorney to allow him to circulate a monthly newsletter to 200 to 300 friends and relatives was disallowed.

There has been some question as to the propriety of publishing professional cards as advertisement of the attorney in newspapers, bar journals, trade magazines, and other publications. The general rule is that advertisements in newspapers are not per se improper if in conformity to local custom. In a lengthy opinion the ABA Committee held that the existence of a local custom is an issue to be decided by the local bar, unless there is an express prohibition by a state disciplinary rule. In the Opinion it is explained that ABA Opinion 24 held the local custom theory was only an accommodation to small city or rural community bar practices which had been established by long usage or long standing custom.

Advertisements in newspapers which go beyond professional card listings have been traditionally disfavored as “grossly undignified and improper.” This is especially true where the advertisement “reads like the advance sheets of the late P. T. Barnum . . .” But reiterating, in Chicago Bar Ass'n v. Berezniak and In

62. N.Y. City Opinions, No. 497 (1939).
63. N.Y. City Opinions, No. 752 (1951).
64. N.Y. City Opinions, No. 615 (1942).
65. N.Y. City Opinions, No. 783 (1953).
66. N.Y. City Opinions, No. 539 (1940).
67. ABA Opinions, No. 69 (1932).
68. Id. Compare N.Y. City Opinions, No. 339 (1935)(insertion of card in trade papers held not local custom) and N.Y. City Opinions, No. 44 (1926) (announcement in N.Y. paper of admission to Florida Bar and office opening in Florida held violation of local custom, not Canon 27) with N.Y. City Opinions, No. 74 (1928) (Italian community in New York had the local custom of inserting cards in papers) and N.Y. County Opinions, No. 237 (1926) (out of state attorney could publish card in local paper if practice not in conflict with custom in attorney's home state).
69. In re Nueman, 169 App. Div. 638, 155 N.Y.S. 428 (1915) (attorney inserted ad in banquet program and newspaper stating “large accident, matrimonial and criminal” law as his specialty, and also stating, “a white lawyer who is a colored man’s friend. Endorsed by leaders of the community.”).
re Braun the courts permitted advertisements in local newspapers and bar journals containing only a simple statement of an attorney’s name and location without self-laudatory statements. Generally prohibited are advertisements in union newsletters, trade magazines, and banquet programs.

The holdings concerning insertion of cards in bar journals are usually the same as in newspaper cases. Furthermore, advertisements stating the attorney’s informal specialty are prohibited in bar journals, thus only allowing recognized specializations or professional card information. The distinction is also made between bar journals and legal journals, the latter being less regulated and more commercially oriented. Consequently it is improper for advertisements to be placed in legal journals.

Unfortunately, the courts have been less than definitive on the standards to be applied in determining a violation of the Canon, if standards are supplied at all. The lack of a guide for the practicing attorney is a typical defense of a censured attorney. In condemning a law firm’s act of sending out New Year greeting cards the court in Hartford County Grievance Committee v. Cole said, “His maturity and sense of judgment ought surely to provoke better reasoning than that.” The court does not go on to state a specific standard to employ in professional advertising cases.

The determination of unethical advertising is usually made on a case by case basis. In In re Ratner the court lamented, “We have furnished no more precise a definition of what constitutes advertising than we have been given for solicitation.” In the New York case of In re Conally the approach was that, “Each case of

76. N.Y. COUNTY OPINIONS, No. 285 (1931).
77. N.Y. CITY OPINIONS, No. 579 (1941) (preparation of pleadings specialty); N.Y. CITY OPINIONS, No. 512 (1939) (non-resident corporation specialty).
78. N.Y. CITY OPINIONS, No. 420 (1937).
80. Id.
81. Id., 161 A.2d at 594.
82. Id.
83. In re Ratner, 194 Kan. 362, 399 P.2d 865, 872 (1965) (attorney’s distribution of speech and article by union officials emphasizing the importance of obtaining legal aid from competent attorneys held not to be self-advertisement).
alleged professional misconduct in connection with a newspaper or magazine article, must be independently judged in light of the context of the particular article and the lawyer's participation in furnishing the material for and in the publication of the same."84 The standard articulated by a Wisconsin court in *State v. Willenson*85 is that "[w]ith very narrow exceptions, largely limited to simple identification of the lawyer's office, proper use of professional cards and letterheads, and proper listing in directories, advertising in any form is deemed solicitation of business, and unprofessional conduct."86 Apparently the requirements are that publicity not be self-laudatory,87 be primarily informative,88 be newsworthy information the report of which is not inspired by the attorney,89 although "a lawyer's cooperation is not the controlling factor . . . ,"90 and not be "inserted with a view to attracting law business or professional engagement."91 Thus, in *In re Gould*92 the court commented that the "attorney's conduct may be judged not by his intent, but also by the objective nature of his conduct and the quality of his act."93 The final test, as stated in *Connelly*, being whether the publicity, considered as a whole, and the lawyer's conduct, were such as to be a calculated artificial stimulus to his popularity.94 More definitively, or as definitively as possible, the factors to be considered in determining the quality of the publicity, are the nature of the wording in the article, the reason for the media interest, and the attorney's participation. If these are "plainly calculated to publicize," the conduct is unethical.95 In *In re Simon*96 the critical element was a

85. *State v. Willenson*, 20 Wis. 2d 519, 123 N.W.2d 452 (1963) (attorney's maintenance of a neon "Income Tax" sign at his office held to be unethical).
86. *Id.*, 123 N.W.2d at 454.
93. *Id.*, 164 N.Y.S.2d at 49.
95. *Id*.
96. *In re Simon*, 32 App. Div. 2d 362, 302 N.Y.S.2d 159 (1969) (attorney's notice to give thanks to the telegrams and letters of congratulations he had received
subjectively determined intent to publicize where there may be a "technical violation" but having the quality of a de minimus situation that is not punishable. 97

As the Belli case indicates, each question in this context occurs in a relatively unique factual setting, and most cases are of first impression and devoid of standards to aid the courts (or the bar) in a determination. 98 The common result is a reduction in the original censure with the court declaring the case as a warning to all other violators whose action may concur with the litigated situation. 99 It is suggested that in order to avoid the confusion, uncertainty, and inefficiency of litigation which results in no precedent or substantial censure of violating parties, there should be: (1) a retreat from the ban or attempted ban on publicity described in Canon 2, or (2) a definitive restatement 100 on ethical conduct under Canon 2, or both. Even with the new Canon 2 of the Code of Professional Responsibility the bar is "navigating on uncharted sea without compass to guide it . . . [and] where the line is to be drawn to protect the Canon is often difficult to indicate." 101

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97. Id.