

ADVISORY ETHICS OPINION 92-09

SYNOPSIS:

A lawyer who advertises that he or she specializes in a certain area of the law violates DR 2-105, which prohibits a lawyer from stating that he or she is a specialist, except in the areas of patent or admiralty law, or has met the requirements of designation as a specialist of the Vermont Supreme Court.

FACTS:

A lawyer who advertises that he or she "specializes in" a certain area of the law, other than patent or admiralty, in print and radio media has inquired of the committee whether such advertisements are permissible.

DISCUSSION:

There has been much discussion of the issue presented here in recent years, both in the courts and by the Committee's counterparts in other jurisdictions. The pertinent section of the Code, DR 2-105, states:

A lawyer may communicate the fact that the lawyer practices or does not practice in particular fields of law and that the lawyer concentrates in one or more fields of law. A lawyer shall not state that the lawyer is a specialist except in the areas of patent or admiralty law if the lawyer is admitted to engage in patent practice before the United States Patent and Trademark Office or is engaged in admiralty practice, or where the lawyer has met the requirements for recognition as a specialist, as determined by the Supreme Court of Vermont.

In *Peel v. Illinois Attorney Registration and Disciplinary Commission*¹, the United States Supreme Court held that a state could not bar an attorney's use of a certification from a bona fide organization. However, the issue here is different. Here, an attorney seeks to advertise a field of specialization other than that allowed by DR 2-105.

Other states professional responsibility committees have opined on this question. The Maine Board of Bar Overseers Professional Ethics Commission held that an advertisement that "our firm specializes in representing workers and other injured persons" violated a Maine Bar Rule that prohibits representations or implications that the lawyer "is a recognized, designated or certified specialist." The Commission felt that *Peel* was distinguishable where, as here, the lawyer had not demonstrated that he was, in fact, certified by any organizations.

The Ohio Supreme Court has stated that the term "specializes in" has acquired a secondary meaning implying formal recognition as a specialist and held that the use of the term "specializes in" was misleading on the theory that it was not verifiable and could be confused with formal state recognition of specialization.²

The Committee on Legal Ethics and Professional Responsibility of the Pennsylvania Bar Association has opined that a lawyer may describe his or her practice as "being limited to" or "concentrated in" particular fields of the law. However, a lawyer may not use the terms "specialist" or "specializing in" as such terms may imply certification by some board or approving authority.

Just last year this Committee, in Opinion 91-10, held that:

Under DR 2-105, an attorney may communicate the fact that he or she concentrates his or her practice or restricts his or her practice to a particular field or fields of law. This is not the same as representing that an attorney "specializes" in a particular area of the law. Under the present Code, an attorney may not claim to specialize in a particular area of the law. A proposal has been made to amend the relevant section to permit attorneys to indicate a specialty. The proposed Amendments have not yet been adopted.

Based on these opinions, the Committee concludes that the attorney requesting the opinion may not advertise that he or she "specializes in" or is a "specialist" in the chosen field of the law without running afoul of DR 2-105. However, the attorney may advertise that his or her practice is "limited to" or "concentrates" in that area.

¹ *Peel v. Illinois Attorney Registration and Disciplinary Commission*, 496 U.S. 91 (1990)

² *Trumbull County Bar Ass'n v. Joseph*, Ohio Supreme Court No.90-2086 (April 13, 1991).