

# ADVISORY ETHICS OPINION 94-12

## SYNOPSIS:

An attorney may advertise concentration in more than one field of law, subject to the limitation of DR 2-101, which provides that a lawyer shall not make a false or misleading communication about the quality of service or competence unless the claim can be factually substantiated.

## DISCUSSION:

DR 2-101 reads as follows:

**DR 2-101** “A lawyer shall not make a false or misleading communication about a lawyer or the lawyer’s services. A communication is false or misleading if it:

- (1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
- (2) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Code of Professional Responsibility or other law;
- (3) compares the lawyer’s services with other lawyer’s services, unless the comparison can be factually substantiated; or
- (4) makes a claim about the lawyer’s quality of service, competence, or the like, unless the claim can be factually substantiated.”<sup>1</sup>

The court there stated: “Commercial speech in the form of truthful advertising of legal services, designed to disclose information to permit a customer to reach an informed decision and to identify the legal services he desires, serves individual and societal interests and, while it may be regulated, it may not be proscribed.<sup>2</sup> Further, a lawyer is permitted publicly to identify one or more areas of law in which he practices...”

The decision further stated that “No detailed guideline or sign post other than an innate sense of right or wrong should be necessary... commercial speech must be honest and truthful, and prospective clients should not be beguiled or deceived by the content or the subject matter of the public utterance.:

Also pertinent to the question proposed is DR 2-105, which reads as follows:

“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.”

## CONCLUSION:

An individual lawyer or law firm may properly advertise that the lawyer or the firm concentrates its practice in more than one field of law as stated in DR 2-105. However, the advertisement shall not make statements about the quality of service, competence, or the like unless the statements can be factually substantiated.

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<sup>1</sup> DR 2-101 was discussed in *In Re Zimmerman*, 438 N.Y.S. 2d 400, 18 (New York Appellate Division 1981).

<sup>2</sup> (*Bates v. State Bar of Arizona*, 433 U.S. 350).