

# ADVISORY ETHICS OPINION 94-13

## SYNOPSIS:

A lawyer or law firm may advertise that they offer a discount for legal services, with the presentation of a coupon. Similarly, a lawyer or law firm may advertise a “free initial consultation.”

## QUESTION:

The requesting attorney has asked the Committee to advise whether or not he or his firm may advertise “10% Off Hourly Rate Services” or, in the alternative, “Free Initial Consultation.”

## DISCUSSION:

The pertinent Disciplinary Rule is DR 2-101, which 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.”

In addition, Ethical Consideration 2-10, which is relevant, reads as follows:

**EC 2-10** Because of the importance of free expression in our society, the Code adopts the approach of avoiding prohibitions where lesser regulation will suffice. This is reflected in the general allowance of advertising, under guidelines for the practitioner to follow. There is no longer a narrow and exclusive approved list of allowable advertising. It is also reflected in the permission given to mail communications directly to prospective clients. Other forms of one-to-one contact, such as solicitation over the telephone or in person, present a greater danger of overreaching and therefore continue to be restricted under the Disciplinary Rules.

To assist the public in obtaining legal services, lawyers must be allowed to make their services known in the form of advertising, as well as through reputation. Advertising involves an active search for a clientele, contrary to tradition. Clearly, the public’s need to know about legal services can be fulfilled, to some degree, through advertising. In its Comment to Rule 7.2 of the Model Rules promulgated by the American Bar Association, the ABA Committee stated that “the interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.”

In the same Comment, it was stated that proper public dissemination of information would include the lawyer’s name or firm name, address and telephone number, the kinds of services the lawyer undertakes, and the basis on which the lawyer’s fees are determined.

## CONCLUSION:

The Committee on Professional Responsibility agrees with the Comment cited above and draws attention to paragraph (1) of DR 2-101 quoted above, which points out that a communication is false or misleading if it omits a fact necessary to make the statement considered as a whole not materially misleading. To avoid such a possibility, it might be wise to state one’s hourly rate subject to the discount and, with regard to a free initial consultation, to state in the advertisement the amount of time involved in the consultation.