

# Committee on Professional Ethics



Opinion #314 - 12/18/73 (8-70)

Topic: Advertising:  
Non-practicing lawyer;  
Solicitation

Digest: Proper for non-  
practicing lawyer to  
make limited identifi-  
cation of himself as a  
lawyer in a publication  
made in connection with  
another profession or  
business

Code: Canon 1  
EC 2-9; 2-10  
DR 2-101 (B); 2-102 (E);  
2-102 (F)

## QUESTION

May a lawyer engaged in the planning consultant business refer to the fact that he is a lawyer admitted to practice law in the State of New York in various circulars and other communications he uses to foster the business. The office from which the business is conducted is in another state in which the lawyer is not admitted to practice law. The lawyer is identified as a lawyer in the following ways:

Advertising circulars under the letterhead of the planning consultant business have been mailed to public agencies and private firms and to "fellow" members of the New York bar, including therein biographical statements about the principals of the business and mentioning the lawyer's degrees and state bar membership, describing him as a "planner-lawyer" with offices in the other state and referring to the ability of the business to provide "technical advice on preparation of ordinances" and "advice on and interpretation of local planning and zoning problems."

## OPINION

The Committee is of the opinion that the distribution of information in the above-described manner is governed by the following disciplinary rules of the Code of Professional Responsibility:

DR 2-101

"(B) A lawyer shall not publicize himself, his partner, or associate as a lawyer through newspaper or

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magazine advertisements, radio or television announcements, display advertisements in city or telephone directories, or other means of commercial publicity, nor shall he authorize or permit others to do so in his behalf except as permitted under DR 2-103."

DR 2-102

"(F) Nothing contained herein shall prohibit a lawyer from using or permitting the use, in connection with his name, of an earned degree or title derived therefrom indicating his training in the law."

It is not clear whether the lawyer is practicing law or whether any part of his planning business constitutes the practice of law. If he is a practicing lawyer, or if any of the activities of the planning business constitutes the practice of law, none of the circulars, publicity, communications or other materials used by the planning business may refer to the fact that he is a lawyer. Nor may they refer to his legal degree. DR 2-102 (E).

If he is not engaged in the practice of law and would reject any legal work offered to him, the planning business may refer to the fact that he is a lawyer and cite his law degree provided it is clearly stated in all material which refers to the fact that he is a lawyer that he is not practicing and will not accept legal business.

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