



## Committee on Professional Ethics

Opinion #566 - 11/15/84 (34-84)

Topic: Advertisement;  
recommendation or endorse-  
ment by third party; non-  
disclosure that advertisement  
paid for by attorney.

Digest: Advertisement improper if paid  
for endorsement or recommenda-  
tion by third party to use  
attorneys' services and mis-  
leading if does not appear to  
be an advertisement but in  
fact is paid for by the attor-  
ney

Code: DR 2-101(A) & (B),  
DR 2-103(A), (B), (C) & (D).

### QUESTION

Is it proper for a law firm to be listed, for a fee, under a category entitled "Professional Services" in a brochure prepared by a real estate brokerage firm, which brochure recommends that a recipient, when purchasing a home, secure the services of an experienced law firm, and lists only the particular law firm as one which concentrates in that legal area?

### OPINION

A brochure, styled "Family Relocation Passport and Professional Services", is proposed to be issued by a real estate broker. In the brochure, there is a listing of various types of professional services that may be of assistance to a home buyer moving into the area. Under the heading of attorney, the brochure "recommends engaging the services of an experienced law firm to assist you". The immediately following sentence then identifies a particular law firm as one which "concentrates in these areas". Only one law firm is so listed. That law firm has paid a fee for such listing.

DR 2-101(A) and (B) of the Code of Professional Responsibility ("Code") permit advertising by an attorney so long as the advertising is not false, deceptive or misleading, and does not contain puffery, self-laudation, or claims regarding the quality of the lawyer's legal services or claims that cannot be measured or verified.

DR 2-103(B) and (C) prohibit a lawyer from compensating, giving anything of value to, or requesting that, any third party recommend or promote the use of the lawyer's services except as permitted by DR 2-101 or under the specific arrangements set forth in DR 2-103(C) and (D).

DR 2-103 further prohibits a lawyer from soliciting employment from a person who has not sought advice regarding employment of the lawyer, in violation of any statute or court rule. Advertising in accordance with DR 2-101 is not deemed to be solicitation in violation of this provision. Nonetheless, recent case law in New York has attempted to distinguish between permissible forms of advertising and prohibited solicitation in the real estate area. See, e.g., In re Koffler, 51 N.Y.2d 140 (1980); In re Greene, 54 N.Y.2d 118 (1981), cert. denied, 102 S. Ct. 1738 (1982). In Greene, the Court of Appeals determined that a letter to real estate brokers setting forth a lawyer's qualifications and fees was tantamount to an invitation to the brokers to solicit clients on behalf of the lawyer, and thus constituted a solicitation of legal business from the brokers' clientele in violation of Judiciary Law §479, and the Court upheld the constitutionality of §479 as applied to third party solicitation.

More recently, the Court of Appeals in In re Alessi, 60 N.Y.2d 229 (1983), upon remand from the United States Supreme Court, again upheld the constitutionality of Judiciary Law §479 and DR 2-103(A) proscribing a lawyer's advertising of his services by direct mail to real estate brokers. The Court noted that the "proscription is not against the attorney making known to potential clients the availability of his services, or even against his doing so through third parties, but against his doing so in a particular manner: through a third party whose interest may be more closely intertwined with those of the attorney than those of the client". 60 N.Y.2d at 234-35.

This Committee does not pass upon matters of law and therefore we express no opinion as to whether the form of advertisement described above constitutes an illegal solicitation under Judiciary Law §479. Nonetheless, this Committee concludes that the paid advertisement, as presently formulated, constitutes a giving of value to a third party, and a request by the lawyer to a third party, to recommend use of the lawyer's services, and is therefore prohibited by DR 2-103(B) and (C) of the Code. The listing is also misleading in violation of DR 2-101(A) in that the purported recommendation is in actuality a paid-for, albeit undisclosed, advertisement.

For the reasons stated, the question posed is answered in the negative.

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