

# New York State Bar Association

## Committee on Professional Ethics

OPINION 740 – 4/23/01	Topic:	Advertising; firm name
	Digest:	A lawyer may not place an advertisement in the Yellow Pages in which the lawyer uses the firm name “A”, or inserts the letter “A” before the firm name, in order to insure favorable placement.
	Code:	DR 2-101(A), DR 2-102(B), EC 2-11.

### QUESTION

May a lawyer place an advertisement in the Yellow Pages in which the lawyer uses the firm name “A”, or inserts the letter “A” before the firm name, in order to insure favorable placement?

### OPINION

This question implicates two provisions of the Code of Professional Responsibility: DR 2-101(A), which contains the general rules governing advertising, and which allows advertising that does not contain claims that are false, deceptive or misleading, and DR 2-102(B), which prohibits lawyers from practicing under a trade name.

Using a name that is not the legal name of one or more partners or former partners in the law firm constitutes use of a trade name within the meaning of DR 2-102(B). DR 2-102(B) separately prohibits trade names and names that are misleading as to the identity of the lawyers practicing under the name. See also EC 2-11. Adding the letter “A” before the name may not be misleading as to the name of the lawyer or lawyers practicing in the firm. The public is certainly used to such a stratagem in the Yellow Pages in other contexts. However, it turns what would otherwise be a representation of the one or more lawyers practicing in the firm (or the name or names of one or more deceased or retired members of the firm or a predecessor firm in a continuing line of succession) into a trade name – something more than the firm name.

Our conclusion with respect to trade names alone would be enough to dispose of this issue. However, we also wish to call attention to EC 2-10. Although DR 2-101(A) prohibits only advertising that is false, deceptive or misleading, EC 2-10 admonishes that, in advertising, "a lawyer should strive to communicate . . . information without undue emphasis upon style and advertising

stratagems which serve to hinder rather than to facilitate intelligent selection of counsel." Inserting the letter "A" before the firm name in order to obtain a more prominent position in the Yellow Pages listing is such a stratagem and should not be condoned.

### **CONCLUSION**

A lawyer may not place an advertisement in the Yellow Pages in which the lawyer uses the firm name "A", or inserts the letter "A" before the firm name, in order to insure favorable placement.

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