



**ILLINOIS STATE  
BAR ASSOCIATION**

# **ISBA Advisory Opinion on Professional Conduct**

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**This Opinion was AFFIRMED by the Board of Governors in July 2010. Please see the 2010 Illinois Rules of Professional Conduct 7.1 and 7.5(a) with its Comment[1]. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.**

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**Opinion Number 736  
April 30, 1981**

**Topic: Advertising; Similarity  
of Names and Fields of Practice**

**Digest:** It is not improper for a lawyer to advertise his availability for employment in a particular field of law even though his name is confusingly similar to another, more experienced lawyer practicing in the same field, so long as the advertisements are not calculated to mislead readers into thinking that the lawyer doing the advertising is the same as the other lawyer.

**Ref:** Rule 2-101

## QUESTION

A lawyer with a national reputation in immigration law, Herbert Pickle (not his real name), operates as a sole practitioner out of a Chicago office. Recently a newly admitted lawyer, Melvin Pickel (also a fictitious name), opened a Chicago office in partnership with a lawyer named Flash, under the partnership name "Pickel and Flash." This firm placed three successive advertisements in a Chicago newspaper. The first listed the name of the firm and its address and telephone number and stated that the firm handled immigration law problems. The second advertisement contained the same information and also listed the names of the individual

lawyers. The third was similar except that it listed the names of the lawyers but not the firm name. The question is whether these advertisements were improper in light of the fact that, since the two names "Pickle" and "Pickel" are pronounced the same way and have similar spellings, business might be diverted from Pickle, the older, more experienced lawyer, to Pickel, the younger and relatively inexperienced lawyer.

#### OPINION

The three advertisements appear to comply with the standards set forth in paragraph (a) of Rule 2-101. This paragraph of the rule specifically permits an advertisement to describe the types of legal matters in which a lawyer will accept employment.

Paragraph (b) of Rule 2-101 prohibits advertisements that "contain any false or misleading statement or otherwise operate to deceive" or fail to contain all information necessary to make the communication not misleading. In the view of the Committee, the advertising in question does not violate this more general prohibition. There would be such a violation if the advertisements were calculated to "pass off" the advertising lawyer (Pickel) as the other lawyer (Pickle). Advertising of that sort would constitute not only a violation of the rule but the tort of unfair competition. However, nothing in the advertisements can fairly be regarded as exhibiting this vice. The younger lawyer has as much right to his name as does the older lawyer. The younger lawyer has as much right as the older to practice in the field of immigration law. Possibly some members of the public will be misled because of the similarity of the names, but this possibility exists in countless cases. One cannot expect a rule of professional conduct to eliminate these possibilities and still apply fairly to the lawyers involved.