



The Florida Bar

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Tallahassee, FL 32399-2300

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www.FLORIDABAR.org

John F. Harkness, Jr.
Executive Director

September 11, 2013

PERSONAL AND CONFIDENTIAL

[REDACTED]

Tampa, Florida 33602

Re: Ethics Inquiry [REDACTED]

Dear [REDACTED]:

I received your August 26, 2013 request for an advisory advertising opinion regarding whether you may list your areas of practice under the LinkedIn header "Skills and Expertise" when you are not board certified.

A lawyer can only state or imply that the lawyer is "certified," a "specialist," or an "expert" if the lawyer is certified by The Florida Bar, by a certification program accredited by the American Bar Association, or by a state bar with certification standards comparable to those of The Florida Bar. Rule 4-7.14(a)(4). Certification is specific to individual lawyers; a law firm cannot be certified, and cannot claim specialization or expertise in an area of practice. Rule 6-3.4(c). Based on these rules, it is staff's position that you may not list your areas of practice under the header "Skills and Expertise" as you are not board certified. While Rule 4-7.14(b) permits an attorney to use language that is potentially misleading if the advertisement contains information or statements that adequately clarify the potentially misleading issue, it is staff's position that providing language in the LinkedIn profile indicating that you are not board certified and not an expert will not remedy this issue. I have included a copy of a New York State Bar Association Opinion 972 which reaches a similar conclusion (copy of ethics opinion enclosed).

Please note that the Standing Committee on Advertising is looking at a similar issue at its next meeting on October 8, 2013. The issue before the committee is whether a law firm can list their areas of practice on a LinkedIn profile under the headers of "Specialties" and "Expertise". I will let you know what the committee's conclusion is after that meeting.

If you disagree with my opinion, you have thirty (30) days to request that the Standing Committee on Advertising review the opinion. A request for review must be addressed to

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Advertising Inquiry No. ██████████

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Elizabeth Clark Tarbert, Ethics Counsel, at 651 E. Jefferson Street, Tallahassee, Florida 32399. The request must be postmarked no later than thirty (30) days from the date of this letter, not the date of receipt. The request must contain the original staff opinion number and clearly state the issues for review. You may include a written argument explaining why you believe my opinion is incorrect. Procedures governing your request for review and committee procedures may be found in Procedures 2(b)(1), 3(c) and 4, Florida Bar Procedures for Issuing Advisory Opinions Relating to Lawyer Advertising or Solicitation (available on The Florida Bar's website at www.floridabar.org). The Standing Committee on Advertising meets semi-monthly. You will be notified of the committee's decision promptly.

If you have any questions, please call me at (850) 561-5780.

Sincerely,



Cynthia E. Booth
Assistant Ethics Counsel

██████████

**New York State Bar Association
Committee on Professional Ethics**

Opinion 972 (6/26/13)

Topic: Listing in social media

Digest: Law firm may not list its services under heading of “Specialties” on a social media site, and lawyer may not do so unless certified as a specialist by an appropriate organization or governmental authority.

Rule: 7.4

FACTS

1. The inquiring lawyer’s firm has created a page on LinkedIn, a professional network social media site. A firm that lists itself on the site can, in the “About” segment of the listing, include a section labeled “Specialties.” The firm can put items under that label but cannot change the label itself. However, the firm can, in the “About” segment, include other sections entitled “Skills and Expertise,” “Overview,” “Industry,” and “Products & Services.”

QUESTION

2. When a lawyer or law firm provides certain kinds of legal services, and is listed on a social media site that includes a section labeled “Specialties,” may the lawyer or law firm use that section to describe the kinds of services provided?

OPINION

3. The New York Rules of Professional Conduct allow lawyers and law firms to make statements about their areas of practice, but the Rules also limit the wording of such statements:

A lawyer or law firm may publicly identify one or more areas of law in which the lawyer or the law firm practices, or may state that the practice of the lawyer or law firm is limited to one or more areas of law, provided that the lawyer or law firm *shall not state that the lawyer or law firm is a specialist or specializes in a particular field of law*, except as provided in Rule 7.4(c).

Rule 7.4(a) (emphasis added). The exception in Rule 7.4(c) allows a lawyer to state the fact of certification as a specialist, along with a mandated disclaimer, if the lawyer is certified as a specialist in a particular area by a private organization approved for that purpose by the American Bar Association, or by the authority having jurisdiction over specialization under the laws of another state or territory.^[1]

4. A lawyer or law firm listed on a social media site may, under Rule 7.4(a), identify one or more areas of law practice. But to list those areas under a heading of “Specialties” would constitute a claim that the lawyer or law firm “is a specialist or specializes in a particular field of law” and thus, absent certification as provided in Rule 7.4(c), would violate Rule 7.4(a). *See* N.Y. State 559 (1984) (under the Rule’s similar predecessor in Code of Professional Responsibility, it would be improper for lawyer to be listed in law school alumni directory cross-referenced by “legal specialty”). We do not in this opinion address whether the lawyer or law firm could, consistent with Rule 7.4(a), list practice areas under other headings such as “Products & Services” or “Skills and Expertise.”

5. If a lawyer has been certified as a specialist in a particular area of law or law practice by an organization or authority as provided in Rule 7.4(c), then the lawyer may so state if the lawyer complies with that Rule's disclaimer provisions, which have undergone recent change.^[2] However, Rule 7.4(c) does not provide that a law firm (as opposed to an individual lawyer) may claim recognition or certification as a specialist, and Rule 7.4(a) would therefore prohibit such a claim by a firm.

CONCLUSION

6. A law firm may not list its services under the heading "Specialties" on a social media site. A lawyer may not list services under that heading unless the lawyer is certified in conformity with the provisions of Rule 7.4(c).

(22-13)

[1] Also, Rule 7.4(b) allows a lawyer admitted to patent practice before the United States Patent and Trademark Office to use a designation such as "Patent Attorney." This opinion does not address the particular circumstances of such patent attorneys.

[2] In *Hayes v. Grievance Comm. of the Eighth Jud. Dist.*, 672 F. 3d 158 (2d Cir. 2012), the Court struck down two parts of the Rule's required disclaimers. One part was the language that "certification is not a requirement for the practice of law in the State of New York and does not necessarily indicate greater competence than other attorneys experienced in this field of law." Subsequently, by order dated June 25, 2012, the Appellate Divisions deleted that language from the required disclaimers. (The other part of the originally required disclaimers – that a certifying organization is not affiliated with a governmental authority, or alternatively that certification granted by another government is not recognized by any New York governmental authority – remains in place.) The *Hayes* court also held that Rule 7.4's requirement that disclaimers be "prominently made" was unconstitutionally void for vagueness as applied to the plaintiff. In a memorandum dated May 31, 2013, the Unified Court System requested comments from interested persons with respect to defining the term "prominently made." A lawyer asserting a specialty risks violation of Rule 7.4(c) if the social media site does not satisfy the requirement of "prominently" making the required disclaimer. See Rule 8.4(a) (violation of Rules "through the acts of another").