

STATE BAR ASSOCIATION OF NORTH DAKOTA

ETHICS OPINION

Opinion No. 07- 02

The Ethics Committee received a request for an opinion asking whether the Requesting Attorney can identify himself as a family law “specialist” in his advertising.

FACTS

The Requesting Attorney confines his practice to the area of family law. The Requesting Attorney is not certified by any certifying organization as a specialist in the area of family law.

ISSUE

Whether an attorney who is not certified by a certifying organization as a specialist in the field of family law can identify himself as a family law “specialist” in his advertising.

DISCUSSION

This issue is governed by N.D.R. Prof. Conduct 7.4 – Communication of Field of Practice. Rule 7.4 provides, in relevant part:

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is a specialist in a particular field of law except as follows:

. . . .

(c) a lawyer may communicate the fact that the lawyer has been certified as a specialist in a field of law by a named organization, provided that the communication clearly states the name of the certifying organization and that there is no procedure in this jurisdiction for approving certifying organizations. The communication need not contain such a statement if the named organization has been accredited by the American Bar Association or the lawyer has successfully completed a certification program sponsored by a state bar association.

The plain language of Rule 7.4 prohibits a lawyer from “stat[ing] or imply[ing] that the lawyer is a specialist in a particular field of law” except if the lawyer has “been certified as a specialist in a field of law by a [certifying] organization,” and the disclosure requirements of Rule 7.4(c) are met. As explained by one court:

By prohibiting the general use of the term “specialist,” the rule seeks to restrain advertising which can be false, deceptive, or misleading. By characterizing himself as a specialist, an attorney does more than merely indicate that he practices within a particular field. The term “specialist” carries with it the implication that the attorney has special competence and expertise in an area of law.

Florida Bar v. Herrick, 571 So.2d 1303, 1307 (Fla. 1990).

Use of the term “‘specialist’ implies that one’s qualifications have been reviewed and acknowledged by an entity authorized and having expertise to do so.” MI Eth. Op. C-232 (Mich. Prof. Jud. Eth.). As noted in the Comment to Rule 7.4:

Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge, and proficiency to ensure that a lawyer’s recognition as a specialist is meaningful and reliable.

The Requesting Attorney states he has not been certified as a family law specialist by any certifying organization. Thus, the Requesting Attorney does not meet the requirement of Rule 7.4(c). Although Rule 7.4 permits the Requesting Attorney to communicate that he practices in the area of family law, or that his practice is limited to family law, if these statements can be made truthfully,¹ the plain language of the rule prohibits the Requesting Attorney from stating or implying he is a specialist in the area of family law.²

This conclusion is supported by judicial opinions from other jurisdictions. For example, in Trumbull County Bar Ass’n v. Joseph, 569 N.E.2d 883, 884 (Ohio 1991) the court publicly reprimanded an attorney for using the terminology “specializing in” the field of

¹ N.D.R. Prof. Conduct 7.4, Comment (“If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted to so indicate.”); Trumbull County Bar Ass’n v. Joseph, 569 N.E.2d 883, 884 (Ohio 1991) (stating attorney “may state that his practice ‘consists in large part or is limited to’ medical malpractice cases whenever these assertions can be made truthfully”).

² The Ethics Committee is not asked to determine when an attorney implies he is a specialist. It has been found that terms like “specializes” or “specializing in” connote formal recognition as a specialist. See Trumbull County Bar Ass’n, 569 N.E.2d at 884 (stating “‘specialize’ connotes formal recognition”); Florida Bar, 571 So.2d at 1307 (rejecting the “argument that the word ‘specialize’ carries a different connotation than ‘specialist’”); In re Peperone, 615 N.Y.S.2d 212, 213 (N.Y. App. Div. 1994) (concluding “the use of the word ‘specializes’ or the phrase ‘specializing in’ connotes formal recognition in a particular area of law”); but see MI Eth. Op. C-232 (stating lawyer cannot advertise as a “specialist” but can advertise as “specializing” in a particular field of law).

medical malpractice when the attorney did not have proper certification. In Florida Bar, 571 So.2d at 1307, the court publicly reprimanded a lawyer for stating his law firm specializes in Customs law, when the lawyer had not been qualified under the Bar's designation or certification program. Similarly, in In re Peperone, 615 N.Y.S.2d 212 (N.Y. App. Div. 1994), the court censured an attorney who, "although not certified as a specialist in matrimonial law," placed a listing in the phone book that indicated, "Over 20 years in private practice specializing in matrimonial law." See also Zimmerman v. Office of Grievance Comms., 438 N.Y.S.2d 400, 402 (N.Y. App. Div. 1981) (stating "a lawyer is permitted publicly to identify one or more areas of law in which he practices, but he may not hold himself out as a specialist in a particular field of law, since no lawyer certification procedure or rules have been established in New York State"); OH Adv. Op. 88-4 (Ohio Bd. Com. Griev. Disp.) ("A lawyer may state that his practice consists in large part or is limited to a field or fields of law but may not claim or imply special competence or experience in a field of law through use of the term 'specialize' or otherwise.")

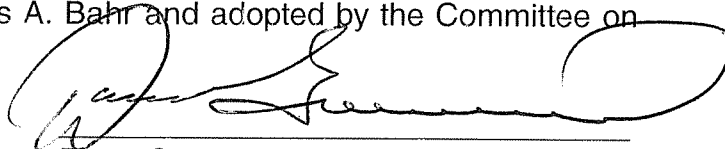
CONCLUSION

Based upon the facts provided by the Requesting Attorney, the Ethics Committee finds the Requesting Attorney may not identify himself as a family law "specialist" in his advertising because he does not meet the requirements of Rule 7.4(c). This opinion is provided pursuant to Rule 1.2(B) of the North Dakota Rules of Lawyer Discipline. This rule states:

A lawyer who acts with good faith and reasonable reliance on a written opinion or advisory letter of the ethics committee of the association is not subject to sanction for violation of the North Dakota Rules of Professional Conduct as to the conduct that is the subject of the opinion or advisory letter.

Id.

This opinion was drafted by Douglas A. Bahr and adopted by the Committee on May 30, 2007, by unanimous vote.

A handwritten signature in black ink, appearing to read "Dann Greenwood", written over a horizontal line.

Dann Greenwood, Chair

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