

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Op. 2014-03
Issued March 13, 2014**

FACTS

The inquiring attorney is a certified elder law attorney. He/she has been certified as such by the National Elder Law Foundation which is an organization that has been accredited by the ABA. The inquiring attorney would like to include his/her designation as a certified elder law attorney on his/her letterhead.

ISSUE PRESENTED

The inquiring attorney asks whether he/she may include the designation “Certified Elder Law Attorney” on his/her letterhead.

OPINION

Rule 7.4 permits the inquiring attorney to include the designation “Certified Elder Law Attorney” on his/her letterhead, but requires him/her also to identify the National Elder Foundation on the letterhead and to include the disclaimer set forth in Rule 7.4(d)(4).

REASONING

Rule 7.4 of the Rules of Professional Conduct applies to this inquiry. In pertinent part it states as follows.

Rule 7.4. Communication of fields of practice and specialization. (a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:

(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state

authority or that has been accredited by the American Bar Association;

(2) the name of the certifying organization is clearly identified in the communication; and

(3) the lawyer also includes, as part of the same communication, the disclaimer that:

"The Rhode Island Supreme Court licenses all lawyers in the general practice of law. The court does not license or certify any lawyer as an expert or specialist in any particular field of practice."

Rule 7.4(a) permits lawyers to indicate areas of practice in communications about their legal services. Communications about areas of practice include those made on a lawyer's letterhead. In Peel v. Attorney Registration & Disciplinary Commission, 110 S.Ct. 2281 (1990), a member of the Illinois bar identified himself on his letterhead as a "Certified Trial Specialist by the National Board of Trial Advocacy." 110 S.Ct. at 2285. The Illinois Code of Professional Responsibility prohibited lawyers from holding themselves out as specialists except in areas of admiralty, trademarks, and patents. Id. at 2286. The disciplinary commission filed a complaint alleging that the attorney, through his letterhead, was holding himself out as a legal specialist in violation of the Code. Id. at 2285-86. The Illinois Supreme Court adopted the Commission's recommendation for censure, concluding that the letterhead was inherently misleading. Id. at 2286-87. The United States Supreme Court concluded that the letterhead was neither actually nor inherently misleading, and ruled that a state may not completely ban a lawyer's claims of specialty certification. Id. at 2292-93. However, the Court noted that states could require a disclaimer about certifications. Id. at 2292. The Rhode Island Supreme Court requires such a disclaimer. See Rule 7.4(d).

The inquiring attorney seeks to include on his/her letterhead the designation "Certified Elder Law Attorney." Rule 7.4 permits him/her to so indicate, but requires him/her also to identify the National Elder Law Foundation on the letterhead and to include the disclaimer set forth in Rule 7.4(d)(4). The designation, by itself, implies that the inquiring attorney is certified as a specialist in elder law by the Rhode Island Supreme Court. The requirements of Rule 7.4(d) clarify for the consumer that the Court does not license or certify lawyers as experts or specialists in particular areas of practice, and clarify the identity of the certifying organization.

Nothing in Rule 7.4 prohibits the inquiring attorney from listing areas of practice or concentration, such as elder law, on his/her letterhead. A lawyer may state that the lawyer's practice is limited to or concentrated in particular fields without complying with Rule 7.4(d). Rule 7.4, Comment [1].