

**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").

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The committee pointed out that a lawyer who does make such a claim on a social media profile must “comply with [Rule 7.4(c)’s] disclaimer provisions, which have undergone

Tell Me About Yourself

The committee’s guidance responds to an inquiry from a law firm that created a LinkedIn profile and was prompted to fill in an “About” segment on the page that “include[s] ‘The firm can put items under that label but cannot change the label itself,’” the opinion states. “However, the firm can, in the ‘About’ segment, include other sections entitled ‘Specialties.’” The law firm asked whether it could use the “Specialties” section to describe the kinds of services it provides.

The panel concluded that the firm may not do so.

Problematic Heading

In reaching that determination, the committee focused on the heading that LinkedIn chose to provide users for use in describing their professional services.

“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,” the committee acknowledged. “But to list those areas in a way that suggests specialization, law firms are prohibited from making such a claim, the committee pointed out. The panel quoted Rule 7.4(a) in full and highlighted relevant language supporting its conclusion:

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, but only if:

Unlike firms, individual lawyers may make specialization claims, the committee said, pointing to the exception identified in Rule 7.4(a). That exception, set forth in Rule 7.4(c)

- the certifying organization has “been approved for that purpose by the American Bar Association,” and the lawyer “prominently” displays a disclaimer stating that the lawyer is not certified by that organization;
- the lawyer “prominently” displays a disclaimer that certifications granted by organizations in other jurisdictions are “not recognized by any governmental authority with jurisdiction over the lawyer.”

Disclaimer Issue in Flux

The committee noted that the task of complying with the disclaimer requirements in Rule 7.4(c) has been complicated by the recent decision in *Hayes v. Grievance Comm. of the State Bar of New York*, which held that lawyers have a First Amendment right to engage in commercial speech.

The court’s first objection related to language that “certification is not a requirement for the practice of law in the State of New York and does not necessarily indicate great skill or expertise.” The Appellate Divisions responded to that ruling by deleting the offending language, the committee noted.

However, the second part of the *Hayes* court’s ruling—which involved a “void for vagueness” challenge to the words “prominently made” in the rule’s description regarding the requirement that a lawyer “prominently” display a disclaimer—remains unresolved. The language did not have to be deleted from Rule 7.4(c) because the *Hayes* court found that the words “prominently made” were not facially unconstitutional, but were inconsistent with the First Amendment. In a memorandum dated May 31, 2013, the [state] Unified Court System requested comments from interested persons with respect to defining the term “prominently made.” Because that issue remains unresolved, however, a lawyer “asserting a specialty risks violation of Rule 7.4(c) if the social media site does not satisfy the requirement of ‘prominently made.’”

For More Information

Full text at http://www.nysba.org/Content/ContentFolders/EthicsOpinions/Opinions901975/EO_972.pdf.

The ‘LinkedIn Loophole’

In a February 2013 notice to its members, the South Carolina bar highlighted a problematic feature on LinkedIn that allows members of the public to add endorsements to a lawyer’s profile. The endorser’s comments then appear on “an as-yet unremovable section on each lawyer’s page” entitled “Skills & Expertise,” the notice said. This placement creates a “loophole” that allows the public to add endorsements to a lawyer’s profile. The bar group directed lawyers to a temporary fix: instructions on how to hide third-party endorsements on a LinkedIn profile.