

NEW YORK STATE BAR ASSOCIATION
Committee on Professional Ethics

Opinion 722 – 9/27/99

Topic: Letterhead; certification

Digest: A lawyer's letterhead may refer to membership in a professional organization. However, if such membership implies certification in a legal field, the reference must comply with DR 2-105(C), which requires that (i) the certifying organization be approved by the American Bar Association or (ii) the lawyer be certified as a specialist in accordance with the rules of another state, and, in either case, that the reference contain specified disclaimers.

Code: DR 2-101(A), DR 2-101(C)(1), DR 2-102(A), DR 2-102(A)(4), DR 2-105(A)&(C).

QUESTION

May a law firm indicate on its letterhead by a footnote, or by using the letters "AICP" after the name of a firm lawyer, that the lawyer is certified as a member of the American Institute of Certified Planners ("AICP")?

OPINION

We are told that the American Institute of Certified Planners is a professional institute within the American Planning Association that certifies practicing land use planners and promotes continuing education and professional development. Certified planners are experienced in comprehensive planning in dealing with connections between transportation and land use, housing and open space, environmental protection and economic development, and zoning and capital improvements. Certification requires specific education and experience and an examination in planning. The inquirer states that planning does not involve the practice of law. Planners are not licensed by the State of New York.

Accordingly, a land use planner wishing to show professional certification might wish to show certification by the AICP.

DR 2-102(A) of the Code of Professional Responsibility states that a lawyer may use letterhead and professional cards that comply with the advertising rules in DR 2-101. DR 2-101(C)(1) allows lawyer publicity to include “memberships in bar associations or other professional societies or organizations.” Consistent with this section, as long ago as 1978, the Committee has opined that a lawyer may list truthful information relevant to the selection of appropriate counsel on letterhead and in advertising, including a statement that the lawyer also practices another profession. New York State 494 (1978)(permissible to state that lawyer is licensed as a certified public accountant). *See generally* N.Y. State 556 (1983); N.Y. State 493 (real estate brokerage).

DR 2-102(A)(4) states that the letterhead of a law firm may include “any information permitted under DR 2-105.” DR 2-105(C), as amended effective June 30, 1999, deals with certification as a specialist:

A lawyer may state that the lawyer has been recognized or certified as a specialist only as follows:

1. A lawyer who is certified as a specialist in a particular area of law or law practice by a private organization approved for that purpose by the American Bar Association may state the fact of certification if, in conjunction therewith, the certifying organization is identified and the following statement is prominently made: “The [name of the private certifying organization] is not affiliated with any governmental authority. 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.”
2. A lawyer who is certified as a specialist in a particular area of law or law practice by the authority having jurisdiction over specialization under the laws of another state or territory may state the fact of certification if, in conjunction therewith, the certifying state or territory is identified and the following statement is prominently made: “Certification granted by the [identify state or territory] is not recognized by any governmental authority within the State of New York. 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.”

DR 2-105 clearly applies to certification of specialty in fields of law. The inquirer characterizes a Certified Planner as a non-legal role. However, we understand that the work of certified planners may involve zoning, environmental protection and other legal restrictions on land use, as well as plans for development. All these matters may be governed by laws and may involve legal advice. This committee has long held that law-related work that may legally be performed by non-lawyers without constituting the unauthorized practice of law may constitute the practice of law when performed by a lawyer. N.Y. State 557 (“While there are many services that may properly be undertaken by lawyers and non-lawyers alike ... when such services are performed by a lawyer who holds himself out as a lawyer, they constitute the practice of law and the lawyer, in performing them, is governed by the Code”); *see also* N.Y. State 583 (not improper for a lawyer to engage in a business other than the practice of law provided the lawyer does not violate any ethical or legal rules). If any of the work performed by a lawyer in the planning field might constitute the practice of law, then advertising referring to certification in that field may be deemed to be representation of a specialty within the meaning of DR 2-105(C).

Thus, we conclude that references to certification of a lawyer by the AICP on the letterhead of a law firm must comply with the provisions of DR 2-105(C). They are therefore appropriate only if (i) the AICP has been approved by the American Bar Association, and then only if accompanied by the appropriate disclaimer, or (ii) the lawyer has been certified as a specialist under the rules of another state, and the required disclaimers are used.

Assuming that the requirements of DR 2-105(C) are met, could the law firm’s letterhead contain a notation “certified by AICP”? The overriding requirement of DR 2-101, set forth in DR 2-101(A), is that advertising not be false, deceptive or misleading. We must therefore determine whether use of “AICP” next to the name of an attorney, or a footnote such as “member, American Institute of Certified Planners,” without more, is false or misleading. We note initially that the AICP is not as widely recognized as the AICPA (American Association of Certified Public Accountants) or the term CPA. Even the designation “Certified Planners” is not widely understood. “Planners” could include financial planners or estate planners. Consequently, we believe an explanation of the term would be necessary.

In *Peel v. Attorney Registration and Disciplinary Commission*, 496 U.S. 91 (1990), the Supreme Court held that an attorney has a constitutional right under the commercial free speech doctrine to advertise certification as a specialist, subject to any disclaimer required by the state to make the claim of specialization not misleading. The Court found that the standards for certification set forth by the certifying organization in that case -- the National Board of Trial Advocacy -- were “objectively clear” and not misleading. *Id.* at 102. The effect that *Peel* may have

on enforceability of DR 2-105(C) is a question of law that is outside the jurisdiction of this Committee.

CONCLUSION

A lawyer's letterhead may refer to membership in a professional organization. However, if such membership implies certification in a legal field, the reference must comply with DR 2-105(C), which requires that (i) the certifying organization be approved by the American Bar Association or (ii) the lawyer be certified as a specialist in accordance with the rules of another state, and, in either case, that the reference contain specified disclaimers.

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