



**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”).