



**New York State Bar Association
Committee on Professional Ethics**

Opinion 1100 (7/12/2016)

Topic: Specialization; Use of the designation “Accredited Estate Planner®” on an attorney’s website and business cards

Digest: An attorney who obtains the designation “Accredited Estate Planner®” from the National Association of Estate Planners & Councils may not use that designation on the attorney’s website or business cards because, even though the American Bar Association has approved a different specialization program of the sponsoring organization, the ABA has not approved its “Accredited Estate Planner®” program.

Rules: 7.4(a) & (c)

FACTS

1. The inquirer is pursuing the designation “Accredited Estate Planner®” (“AEP”) through the National Association of Estate Planners & Councils (“NAEPC”). Both attorneys and non-attorney professionals (such as Chartered Life Underwriters® and Certified Public Accountants) may earn this designation. According to the inquirer, the designation reflects a commitment to a “team approach” to estate planning and does not connote being a “specialist” in estate law. The inquirer says he would not hold himself out as a specialist, but wishes to use the designation on his website and business cards.

QUESTION

2. May a lawyer’s website and business cards use the designation “Accredited Estate Planner®” if the lawyer obtains that designation through the National Association of Estate Planners & Councils?

OPINION

3. The question involves the permissible ways for an attorney to claim to be certified as a specialist in a particular practice area of law. Rule 7.4 of the New York Rules of Professional Conduct (the “Rules”), which addresses identification of practice areas and specialization, states:

(a) A lawyer or law firm may publicly identify one or more areas of law in which the lawyer or 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 is a specialist or specializes in a particular field of law, except as provided in Rule 7.4(c).

* * *

(c) 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: “This certification is not granted by any governmental authority.”

(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: “This certification is not granted by any governmental authority within the State of New York.”

(3) A statement is prominently made if:

(i) when written, it is clearly legible and capable of being read by the average person, and is in a font size at least two font sizes larger than the largest text used to state the fact of certification; and

(ii) when spoken aloud, it is intelligible to the average person, and is at a cadence no faster, and a level of audibility no lower, than the cadence and level of audibility used to state the fact of certification.

4. The inquirer states that the designation “Accredited Estate Planner[®]” does not connote being a “specialist,” but we do not agree. The terms “accredited” and “certified” imply expertise. We have previously held that a lawyer may not claim to be an “expert” in any area of the law, other than as permitted by Rule 7.4(c). *See* N.Y. State 1021 (the word “expert” is an obvious synonym for the word “specialist”); N.Y. State 757 (no support in rules for use of “expert”); N.Y. State 722 (if membership in a professional organization implies certification in a legal field, the reference must comply with [the former Code’s equivalent to Rule 7.4(c)]). When used in conjunction with “a particular area of law or law practice,” the term “accredited” is a synonym for specialist.

5. This conclusion is supported by the NAEPC website, which asserts that one of its goals is to “encourage specialization programs to increase recognition and acceptance of estate planning as a *specialty*. ... NAEPC administers two separate and distinct *specialization* programs.” (Emphasis added.) One of the programs NAEPC administers is the AEP program, and the other program is the “Estate Planning Law Specialist (EPLS)” program. The EPLS program has been approved by the ABA, but the AEP program has not received such approval.

6. We do not opine here on whether enforcement of Rule 7.4 would pass constitutional muster, since that question is one of law that is beyond the jurisdiction of this Committee. The U.S. Supreme Court held in *Peel v. Attorney Registration and Disciplinary Commission of Illinois*, 496 U.S. 91, 110 (1990), that States may not categorically restrict attorneys from making claims of certification and specialization, but the Court also said that “[t]o the extent that potentially misleading statements of private certification or specialization could confuse consumers, a State might consider screening certifying organizations or requiring a disclaimer about the certifying organizations or standards of specialty.”

7. In Rule 7.4, New York has created criteria for screening certifying agencies. Specifically, Rule 7.4(c) prohibits a lawyer from claiming specialty certification unless the certification is issued by either (i) a private organization approved for the purpose of certifying attorneys in particular practice areas by the American Bar Association (“ABA”), or (ii) an authority having jurisdiction to do so in another state or territory. The inquirer has not met either of these standards. According to the ABA’s website, the ABA has approved the NAEPC’s Estate Planning Law Specialist program, but the ABA has not approved the NAEPC’s Accredited Estate Planner program. Moreover, to our knowledge, the AEP program has not been certified by any authority with jurisdiction to certify estate planners in another state or jurisdiction.

CONCLUSION

8. An attorney may not use the term “Accredited Estate Planner[®]” on the attorney’s website or business cards. The issuer of the designation is a private organization and its AEP program has not been approved by the ABA for the purpose of accrediting specialization as required by Rule 7.4(c)(1).

(16-16)