



Ohio Board of Professional Conduct

OPINION 2021-05

Issued June 11, 2021

Not Current – Subsequent Rule Amendment to Prof.Cond.R. 7.4 eff. Apr. 15, 2024

Communication of a Lawyer Specialization in a Field of Law Not Designated by the Supreme Court

SYLLABUS: A lawyer may state or imply that she or he is a specialist in a field of law only if that field of law has been designated as an area of lawyer specialization by the Supreme Court. A communication by a lawyer that he or she is a specialist in a field of law not designated by the Supreme Court is misleading.

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.



Ohio Board of Professional Conduct

65 SOUTH FRONT STREET, 5TH FLOOR, COLUMBUS, OH 43215-3431

Telephone: 614.387.9370 Fax: 614.387.9379

www.bpc.ohio.gov

PATRICIA A. WISE
CHAIR
HON. D. CHRIS COOK
VICE- CHAIR

RICHARD A. DOVE
DIRECTOR
D. ALLAN ASBURY
SENIOR COUNSEL
KRISTI R. MCANAU
COUNSEL

OPINION 2021-05

Issued June 11, 2021

Not Current – Subsequent Rule Amendment to Prof.Cond.R. 7.4 eff. Apr. 15, 2024

Communication of a Lawyer Specialization in a Field of Law Not Designated by the Supreme Court

SYLLABUS: A lawyer may state or imply that she or he is a specialist in a field of law only if that field of law has been designated as an area of lawyer specialization by the Supreme Court. A communication by a lawyer that he or she is a specialist in a field of law not designated by the Supreme Court is misleading.

QUESTION PRESENTED:

May a lawyer state or imply that she or he is a specialist in a particular field of law if the lawyer has been certified as a specialist by an organization approved by the Supreme Court Commission on Certification of Attorneys as Specialists but the field of law has not been designated by the Supreme Court as an area of lawyer specialization in Ohio?

APPLICABLE RULES: Prof.Cond.R. 7.1, 7.4

OPINION: The requesting lawyer represents several lawyers in an Ohio law firm that concentrates its practice in the area of truck safety law. One or more lawyers in the firm is certified by the National Board of Trial Advocacy (“NBTA”) in the area of “truck accident law.” The law firm wishes to advertise with the statement “Lawyers NBTA board-certified in Truck Accident Law” without reference to the Supreme Court of Ohio or its Commission on the Certification of Attorneys as Specialists (“commission”).

Designation of Areas of Lawyer Specialization

Pursuant to its constitutional authority to regulate the practice of law in Ohio, the Supreme Court has adopted rules regarding the designation of areas of lawyer specialization. *See* Oh.Const.IV, Sec.2(B)(1)(g); Gov.Bar R. XIV. The Court has established the Commission on the Certification of Attorneys as Specialists to assist the Court in this task. The commission has two primary responsibilities: (1) it accredits organizations that, in turn, certify individual lawyers as specialists; and (2) it recommends to the Supreme Court, either *sua sponte* or upon petition, fields of law for designation as specialty areas. The commission performs these tasks pursuant to standards promulgated by the Supreme Court in Gov. Bar R. XIV and accreditation standards adopted by the commission.

If a lawyer is certified by an accredited organization as a specialist in field of law and if that field of law is designated by the Supreme Court as a specialty area, the lawyer may hold himself or herself out as a specialist. As of the date of this opinion, the commission has accredited four organizations, including NBTA, to certify specialists, and the Supreme Court has designated 18 fields of law as specialty areas.

Although “truck accident law” is offered by NBTA as a certified specialty, the Supreme Court has not designated “truck accident law” as an area of lawyer specialization. In researching this opinion, the Board was advised that a petition to designate “truck accident law” as an area of specialization was denied by the commission in 2019.¹

Lawyers’ Communication of a Specialty

As noted above, a lawyer is permitted to communicate that he or she is a specialist in an area of law if the lawyer has been certified as a specialist by a certifying organization in an area of law designated by the Supreme Court. Prof.Cond.R. 7.4(e); Gov.Bar R. XIV(C)(1). Conversely, a lawyer may not communicate a specialty in an area of law that has not been designated by the Supreme Court. Prof.Cond.R. 7.4(e).

¹ Consequently, the commission declined to recommend a specialty in “truck accident law” to the Supreme Court.

The intent of the rule and underlying regulatory process have remained largely unchanged since 1993. The former Code of Professional Responsibility stated "[a] lawyer who is certified as a specialist in a particular field of law pursuant to the Supreme Court Rules for the Government of the Bar of Ohio may hold himself or herself out as a specialist *only in accordance with those rules.*" DR 2-105(4) (emphasis added.) Consequently, the Board concludes that the communication of a specialty offered by an accredited organization, but not formally designated as a specialty by the Supreme Court, is contrary to the prohibition that a lawyer not state or imply a specialization under Prof.Cond.R. 7.4(e).

Misleading Communication of a Specialty

The communication by a lawyer of an area of specialization that has been certified by an accredited organization, but that has not been designated by the Supreme Court, also implicates Prof.Cond.R. 7.1. Prof.Cond.R. 7.1 prohibits a lawyer from making or using a false, misleading, or nonverifiable communication about the lawyer. "A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation." Prof.Cond.R. 7.1, cmt.[1]. *See also, Office of Disciplinary Counsel v. Furth*, 93 Ohio St.3d 173, 2001-Ohio-1308 (lawyer disbarred for misconduct that included holding himself out as a specialist in an area of law not designated by the Supreme Court.)

A statement that the lawyers in the firm are certified by the NBTA in the area of "truck accident law" is true, but misleading because it implies that the area of law is one designated by the Supreme Court as a specialty in Ohio through the same regulatory process the Court has utilized for 18 other designated specializations. *In re R. M. J.* (1982), 455 U.S. 191, 203, 102 S.Ct. 929 (misleading advertising may be prohibited entirely) cited in *Peel v. Atty. Registration & Disciplinary Comm.* (1990), 496 U.S. 91, 110 S.Ct. 2281. Prospective Ohio clients expect that Ohio lawyers advertising a specialty are permitted to do so based on the Supreme Court's formal designation of the area of specialization. There exists a substantial likelihood that a potential Ohio client could erroneously conclude that communication of the NBTA certification in "truck accident law" also means the specialty has been designated by the Supreme Court. Consequently, the Board advises that a lawyer should not state or imply that he or she is a certified specialist unless

and until the area of specialization is designated by the Supreme Court pursuant to its constitutional authority to regulate the practice of law.