

(September 10, 2008 – As proposed by the Standing Committee on Lawyer Advertising and Solicitation)

RULE 7.4 Communication Of Fields Of Practice And Certification

Lawyers may state, announce or hold themselves out as limiting their practice in a particular area or field of law so long as the communication of such limitation of practice is in accordance with the standards of this Rule, Rule 7.1, Rule 7.2, and Rule 7.3, as appropriate. A lawyer shall not state or imply that the lawyer has been recognized or certified as a specialist in a particular field of law except as follows:

(a) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation;

(b) A lawyer engaged in Admiralty practice may use as a designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation;

(c) A lawyer who has been certified by the Supreme Court of Virginia as a specialist in some capacity may use the designation of being so certified, e.g., "certified mediator" or a substantially similar designation;

(d) A lawyer may communicate the fact that the lawyer has been certified as a specialist in a field of law by a named organization, provided that: 1) the lawyer has been certified as a specialist by an organization currently accredited by the American Bar Association and the name of the certifying organization is clearly identified in the communication; or 2) that the communication clearly states that there is no procedure in the Commonwealth of Virginia for approving certifying organizations.

COMMENT

[1] This Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters in a specified field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a "specialist," practices a "specialty," or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in Rule 7.1 and 7.2 to public communications concerning a lawyer's services.

[2] However, a lawyer may not communicate that the lawyer has been recognized or certified as a specialist in a particular field of law, except as provided by this Rule. Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office as reflected in paragraph (a). Paragraph (b) recognizes that designation of admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

[3] Because Virginia has no procedure for approving non-ABA accredited organizations granting certifications of other specialties, lawyers communicating the fact that they have been certified as specialists in a field of law by a named organization (other than the Supreme Court of Virginia as provided in paragraph (c)) which are not accredited by the ABA must clearly disclose that there is no procedure in Virginia for approving certifying organizations (paragraph (d)).

VIRGINIA CODE COMPARISON

Rule 7.4(a) and (b) are substantially the same as DR 2-104(A). Paragraph (c) is new, and paragraph (d) follows one of the two options in *ABA Model Rule 7.4(c)*.

COMMITTEE COMMENTARY

The Committee maintained the current DR 2-104(A) approach in the first two paragraphs of this Rule.

Because national organizations are increasingly certifying specialists in different areas of the law, the Committee determined to permit Virginia lawyers to describe such certifications. However, Virginia has no procedure for state approval of such certifications. For this reason, the Committee adopted the alternative *ABA Model Rule 7.4(c)* that requires lawyers communicating certified specializations to make the additional clear disclosure that Virginia has no procedure for approving certifying organizations, with the limited exception of those organizations currently accredited by the ABA. ~~This additional disclosure balances Virginia clients' interest in receiving additional information about lawyers and the need to avoid misleading clients by implying some government-approved certification.~~ Because of the stringent requirements needed to attain ABA accreditation, the Committee has deleted the requirement that those certifications carry such a disclaimer. ~~At the same time~~ In addition, it was deemed that any certification process implemented by the Supreme Court of Virginia (under (d)) would obviously be reliable, so as to eliminate the necessity for any disclaimer.