

THE PHILADELPHIA BAR ASSOCIATION
PROFESSIONAL GUIDANCE COMMITTEE
Opinion 2012-8
(November 2012)

The inquirer, a practicing Philadelphia lawyer, seeks guidance regarding advertising through LinkedIn, a website used for professional networking. According to the inquirer, each professional's LinkedIn profile contains a section entitled "Skills & Expertise," under which the user can list his or her skills and expertise, including areas of legal practice. In addition, the "Skills & Expertise" section permits a user to indicate his or her "proficiency," *i.e.*, beginner, intermediate, advanced or expert, in each practice area the user lists. The inquirer has two questions. May an attorney list his or her areas of practice in the "Skills & Expertise" section; if so may an attorney also use the proficiency categories within the "Skills & Expertise" section?

Resolution of these questions implicates Pennsylvania Rules of Professional Conduct (the "Rules") 7.1 and 7.4.

Rule 7.1 provides that: **Rule 7.1. Communications Concerning a Lawyer's Service.**

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

The Comments to the Rules, although not adopted by the Pennsylvania Supreme Court, are meant to provide guidance in the interpretation of the Rules. The Comments to Rule 7.1 provide that:

[1] This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. 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.

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or

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fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client.

Rule 7.2. **Advertising**, provides in relevant part that,

(a) Subject to the requirements of Rule 7.1, a lawyer may advertise services through written, recorded or electronic communications, including public media, not within the purview of Rule 7.3.

...

Comment [3] provides in part that,

...electronic media, such as the Internet, can be an important source of information about legal services...

Rule 7.4 **Communication of Fields of Practice and Specialization** provides in relevant part that:

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state that the lawyer is a specialist except as follows:

(1) 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;

(2) a lawyer engaged in admiralty practice may use the designation "admiralty," "proctor in admiralty" or a substantially similar designation;

(3) a lawyer who has been certified by an organization approved by the Supreme Court of Pennsylvania as a certifying organization in accordance with paragraph (b) may advertise the certification during such time as the certification of the lawyer and the approval of the organization are both in effect;

(4) a lawyer may communicate that the lawyer is certified in a field of practice only when that communication is not false or misleading and that certification is granted by the Supreme Court of Pennsylvania.

...

Applying Rule 7.1, it is clear that any statements on LinkedIn, or on any other website, must be truthful, may not mislead the public, and should convey only objective verifiable information.

Use of the internet as a permissible means of advertising is made clear by the provisions of Rule 7.2(a) as well as Comment 3 to that Rule.

While it is clear that Rule 7.4(a) permits a lawyer to communicate the fact that he or she does or does not practice in a particular field of law, it is also made clear by Rule 7.4(a) that a lawyer is strictly prohibited from stating that the lawyer is a specialist unless, *inter alia*, that lawyer has been certified as a specialist by an organization that has been approved by the Supreme Court of Pennsylvania.

The format of LinkedIn creates ambiguity. While LinkedIn does not include the word “specialist” on a profile, the inquirer is concerned about listing practice areas in the “Skills and Expertise” section since use of the term “expertise” might be considered akin to use of “specialist.” The Committee finds that listing under that heading, which cannot be changed by an individual placing a profile there, is merely listing the areas in which an attorney practices, similar to such listings on many law firm websites.

However, turning to the specific categories under that listing, in which the inquirer can specifically indicate that she is an “expert” in a certain field, the Committee finds that this could reasonably lead a consumer to believe that the lawyer is a “specialist,” despite the fact that the lawyer’s expertise does not invoke any of the provisions of Rule 7.4a which would allow such a description by the inquirer of herself. Thus, while the inquirer may list her practice area under the general category of “Skills and Expertise” the Committee finds that the inquirer **may not** categorize herself as expert or herself as an “expert” or for that matter “experienced” outside of the parameters of Rule 7.4.

This conclusion is consistent with the plain language of the Rules and long standing ethical guidance. For example, in Formal Opinion 85-170 the Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility noted that the use of subjective terms such as “experienced,” “expert,” “highly qualified,” or “competent” are difficult for laymen to understand and interpret and should be used sparingly, if at all. The Opinion noted that “Attorneys must use objective information to convey their experience, such as the number of cases handled in a particular area, the number of cases handled in a particular field, or the number of years in practice.”

In addition, since third parties are permitted to post comments about an individual on that individual’s linked in page, the Committee cautions that the inquirer must monitor those posting to assure that any statements about her qualifications are truthful, do not convey unreasonable or unquantifiable expectations, and are not misleading. If any of them are, the inquirer should immediately remove them from her LinkIn page.

Finally, the inquirer is cautioned to evaluate all advertising both in the context in which it is presented, as well as the context in which it will be viewed by clients and potential clients, to ensure that the use of subjective terms does not make false or misleading communication about the lawyer's services. Thus, it is suggested that the Inquirer consider using more objective examples of the lawyer's services rather than the broad, subjective categories provided by LinkedIn.

CAVEAT: The foregoing opinion is advisory only and is based upon the facts set forth above. The opinion is not binding upon the Disciplinary Board of the Supreme Court of Pennsylvania or any other Court. It carries only such weight as an appropriate reviewing authority may choose to give it.