

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #15-08143-A Website Language Advertising Expertise Rule 7.4A Certification as Specialist or Expert

Pursuant to Practice Book §2-28B, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, reviewed a request for an advisory opinion filed on November 2, 2015. The proposed advertisement concerns additional language the requesting attorney proposes to add to his biography presently on a firm website. The proposed language advertises that he has developed “a specialization in DUI law” and that he has “expertise” in DUI defense. The reviewing committee concluded that the proposed advertisement does not comply with the Rules of Professional Conduct.

The entire website was not reviewed for this advisory opinion; rather, only new information to the website identified by the requesting attorney was reviewed. The proposed advertisement provides, in part, the following information: “Since 1998 [the requesting attorney] has driven himself to develop a specialization in DUI law;” the attorney “has testified as an expert in both DMV hearings and in habeas corpus proceedings in the Superior Court as an expert in DUI Defense issues;” and “has used his expertise in DUI Defense to consult on DUI defense for attorneys in other states....”

As part of the request for an advisory opinion, the requesting attorney provided a copy of a recent federal court decision concerning Rule 4-7.14 of the Rules Regulating the Florida Bar. *Searcy et al. v. The Florida Bar et al.*, No. 4:13-cv-664, 2015 WL 5759238, at *1 (N.D. Fla. Sept. 30, 2015).

Rule 4-7.14 regulates how attorneys in Florida may advertise specialization or expertise in a practice area. The federal district court in the *Searcy* case found Florida's rule unconstitutional under the First Amendment because it prohibited the plaintiff law firm from advertising its expertise or specialization in mass tort cases. The requesting attorney, however, did not provide this office with any legal argument as to why he believed the *Searcy* case applied to the Connecticut Rules of Professional Conduct. A ruling on the constitutionality of a Rule of Professional Conduct is outside the scope of this attorney advertising advisory opinion and the authority vested in this reviewing committee and the Statewide Grievance Committee under Practice Book §2-28B.¹

The legal issue presented by the requesting attorney is whether he can claim to specialize in DUI defense or claim to be an expert in this area of law, when DUI defense is not a recognized field of law that a lawyer may be certified as a specialist in Connecticut under Rule 7.4A(e).

Rule 7.4A provides for a two-step process in order to obtain certification as a specialist. First, the area of law that a board or entity seeks to certify as a specialty must be listed as one of the areas of law under Rule 7.4A(e) that is eligible for certification. Second, that board or entity must obtain approval from the Rules Committee of the Superior Court to certify lawyers as a specialist in that particular field of law. To date, only four boards or entities have obtained approval from the Rules Committee to certify lawyers as specialists in six of the twenty-eight areas of law currently recognized as being eligible for certification under Rule 7.4A(e). Those areas of law are consumer bankruptcy law, business bankruptcy law, civil trial practice, criminal law, child welfare law and

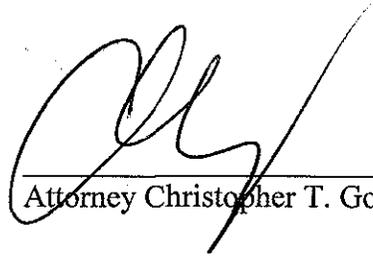
¹ We note that this issue is not settled. See *Loughlin v Tweed et al*, No. 15-649, --- F.R.D. ---- 2015, WL 5797815 (E.D. La. Oct. 01, 2015), which found bar regulations limiting use of the word "specialist" to be constitutional when restricted to attorneys who have completed an approved certification program.

workers' compensation law.

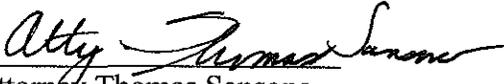
Apart from the constitutional question, and applying the certification process to the present case, the requesting attorney cannot state or imply that he is an expert or specialist in DUI defense because DUI defense is not recognized as an area of law that may be eligible for specialty certification under Rule 7.4A(e). Accordingly, the proposed statements in the advertisement that state that the attorney has developed a "specialization in DUI law" and has "used his expertise in DUI Defense" are not permitted. In addition, the statement in the proposed advertisement that the attorney has "testified as an expert in both DMV hearings and habeas corpus proceedings in the Superior Court as an expert in DUI Defense issues" should be modified to state that the attorney has testified as an expert witness in those proceedings. Accordingly, this reviewing committee opines that the advertisement does not comply with the Rules of Professional Conduct.

(E)

ISSUE DATE: November 23, 2015



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