



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I wish I had a pivotal trial practice question to ask you relating to some huge and important case, but alas what I have for you is a mundane question about bios and practice descriptions. Together with some others, I have left a larger firm, and we are now trying to realize the dream of having our own boutique litigation practice.

We've divided up tasks, and I am responsible for pulling together marketing materials, including our website, with bios and attractive descriptions of our practice capabilities. I am stymied about whether and when it is appropriate to say that one of us "specializes" in a particular area of practice in light of Rule 7.2(c). I am also concerned whether we can say that one of us is "expert," or "an expert" in a particular area. We want to be able to attract clients, but I don't want to cross any lines.

A: These questions may be mundane, but they are common. Let's start with the rules that apply. Model Rule 7.1 provides the basic framework: "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." Rule 7.2 provides additional specifics, including in subsection (c): "A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law" unless the lawyer actually has been certified as a specialist by an organization approved by an appropriate state or territorial authority or accredited by the ABA. Comment 9 to Rule 7.2 explains that the rule permits reference to a lawyer as a "specialist," practicing a "specialty," or that the lawyer "specializes in" a field of law "based on the lawyer's experience, specialized training or education, but that the communications are subject to the "false or misleading" standard of Rule 7.1.

Applying this framework to your issues, it is appropriate—when truthful, with a basis in fact—to state that you or your colleagues "specialize" or are a "specialist" in a particular type of litigation or other practice, as long as you do not state or imply that there is a certification of specialization unless the requirement of Rule 7.2(c) is met. Be careful about claiming that someone specializes in multiple fields or areas—a common dictionary definition of "specialize" describes it as a "focus on one specific subject, skill, job or function." Also consider the context of the use of these words. For example, just because someone limits their practice to a certain field of law, doesn't

necessarily mean they are good or successful at it. If “specializes” is being used in a manner to imply expertise, then the context of that usage must be considered to verify that it is true and not misleading. Consider using “focuses,” or “practices in the area of” as safe substitutes for or alternatives to “specializes.”

The matter of describing a lawyer as an “expert” or having “expertise” in a certain area is subject to similar analysis under Rule 7.1. The statement must be true and not misleading. For example, query whether a lawyer could be “expert” in a certain area of law after having only one or two cases in that area, or not having led cases in that area, or having been unsuccessful in the area. The use of “expertise” rather than “expert”, e.g., “Lawyer X has expertise in employment litigation,” is probably safer in many cases than saying “Lawyer X is an expert in employment litigation.”

There is another consideration about a claim of being an “expert” or (to a lesser extent) having “expertise.” A lawyer holding themselves out as an “expert” in a particular field may be implying to clients that they operate at a higher level of competence than the average lawyer. This may lead to higher client expectations about the result and perhaps to a disgruntled client seeking to hold them to a higher standard of care based on that representation if something goes wrong. Alternatives to “expert” language in bios and promotional materials include truthful descriptions of extensive experience or successful results, without (or disclaiming) implication of future results in particular cases.

The Ethics Lawyer

About Dear Ethics Lawyer

The twice-monthly “Dear Ethics Lawyer” column is part of a training regimen of the Legal Ethics Project, authored by [Mark Hinderks](#), former managing partner and counsel to an AmLaw 134 firm; Fellow, American College of Trial Lawyers; and speaker/author on professional responsibility for more than 25 years. Mark leads Stinson LLP’s [Legal Ethics & Professional Responsibility](#) practice, offering advice and “second opinions” to lawyers and law firms, consulting and testifying expert service, training, mediation/arbitration and representation in malpractice litigation. The submission of questions for future columns is welcome: please send to mark.hinderks@stinson.com.

Discussion presented here is based on the ABA Model Rules of Professional Conduct, but the Model Rules are adopted in different and amended versions, and interpreted in different ways in various places. Always check the rules and authorities applicable in your relevant jurisdiction – the result may be completely different.