

**RHODE ISLAND SUPREME COURT ETHICS ADVISORY PANEL  
GENERAL INFORMATIONAL OPINION NO. 1  
Issued August 2, 1990**

The Panel has received inquiries concerning the proper form for attorney advertising which is to be published in print media and does not involve targeted solicitation. In formulating its position the Panel, consistent with the pertinent provisions in the Rules of Professional Conduct, does not distinguish between the standards applicable to advertising in a general circulation newspaper or journal and those governing advertising in a legal periodical.

The general authorization for attorney advertising is provided by Rule 7.2. This rule also includes record keeping requirements requiring no elaboration from the Panel. Rule 7.2 provides:

**Advertising.** -- (a) Subject to the requirement of Rule 7.1, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor, radio or television, or through written communication not involving solicitation as defined in Rule 7.3.

(b) A copy or recording of an advertisement or written communication shall be kept for two years after its last dissemination along with a record of when and where it was used.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written communication permitted by this rule and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

(d) Any communication made pursuant to this rule shall include the name of at least one lawyer responsible for its content.

In Bates v. State Bar of Arizona, 433 U.S. 350 (1977) the United States Supreme Court held that since attorney advertising enjoys First Amendment protection the permissible extent of state regulation is extremely limited. "For all practical purposes the only remaining permissible limitation on advertising - as distinct from solicitation - is that it not be misleading." I. G. Hazard and the Law of Lawyering, 508 (1989). Rule 7.1, titled "Communications Concerning a Lawyer's Services" provides the Rules' definition of "false and misleading" in this context:

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:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rule of Professional Conduct or other law; or

(c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

Rule 7.4 and the comment thereto provide further detail as to what will be deemed "misleading" in the specific context of identifying fields of practice:

Rule 7.4. Communications of Fields of Practice. -- A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may not, however, indicate that his or her practice is limited to or concentrated in particular fields of law unless, as part of the same communication, the lawyer also indicates that Rhode Island does not have a procedure for certification or recognition of specialization by lawyers. A lawyer shall not state or imply that the lawyer is a specialist except as follows:

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

(b) a lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.

The comment adds, in pertinent part:

[S]tating that the lawyer is a "specialist" is not permitted. Stating that the lawyer's practice is "limited to" or "concentrated in " particular fields is permitted only where the same communication also states . . . that "Rhode Island does not have a procedure for certification or recognition of specialization by lawyers." These terms have acquired a secondary meaning implying formal

recognition as a specialist. Hence, use of these terms may be misleading unless the lawyer also communicates the fact that Rhode Island does not recognize or certify "specialist."

Rule 7.4 thus expressly permits an attorney to indicate the fact that he does or does not practice in particular fields of law. However, Rule 7.4 also expressly prohibits a lawyer from implying that he or she is a specialist.

The Panel's mandate is to assist attorneys in identifying and adhering to the highest possible ethical goals for the practice of law rather than to identify the minimum conduct necessary to avoid action by the court's Disciplinary Counsel. Many attorneys provide typical professional data such as name, address, and phone number, followed by a short list of types of cases handled such as real estate, probate, personal injury. The Panel takes the position that this type of list, and indeed, any indication of types of cases handled implies specialization. An attorney who wishes to include such information in his or her advertisement must include the disclaimer set forth in Rule 7.4 which states that "Rhode Island does not have a procedure for certification or recognition of specialization by lawyers" in order to obtain Panel protection.

The Panel's position is consistent with the United States Supreme Court's reasoning in Peel v. Attorney Disciplinary Commission of Illinois, 58 USLW 4684 (U.S., June 4, 1990). The Court states "To the extent that potentially misleading statements of private certification or specialization could confuse consumers, a State might consider . . . requiring a disclaimer about the certifying organization or the standards of a specialty." 58 USLW at 4684. In his concurring opinion Justice Marshall adds that "[f]acts as well as opinions can be misleading when they are presented without adequate information." 58 USLW at 4688.

Ethics Advisory Panel advice is protective in nature. There is no requirement that an attorney abide by a Panel opinion, but if he or she does, he or she is fully protected from any charge of impropriety. Future inquiries submitted to the Panel concerning attorney advertising will be decided with reference to this General Informational Opinion.