55 PRB

[Amended 19-Nov-2003]

[4-Jun-2003]

STATE OF VERMONT

PROFESSIONAL RESPONSIBILITY BOARD

In re PRB File No. 2002.093

AMENDMENT TO Decision No. 55

In Decision No. 55 filed June 4, 2003, this Panel considered a complaint regarding a law firm's Yellow Pages advertisement. The Panel found that a statement identifying the attorneys as "the experts" in enumerated areas of law violated Rule 7.1(c), which prohibits any advertisement or other communication that "compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated." The Panel declined, however, to find that use of the phrase, "injury experts," violated Rule 7.1(b), which prohibits any advertisement or other communication that "is likely to create an unjustified expectation about results the lawyer can achieve."

Disciplinary Counsel has filed a Motion to Reconsider the second

portion of our decision, and we have done so.

In making our initial decision, we were influenced by two factors. The first of these is the historical evolution of the entire issue of attorney advertising. In a relatively short time the Bar has gone from an absolute ban on advertising to liberal rules which allow many types of advertising. The other evolution which affected our decision is that of the consumer. Sophisticated advertising has become pervasive in our culture, and the consumer today has likewise become much more sophisticated and discerning in his or her approach to advertising.

In her Motion to Reconsider, Disciplinary Counsel has asked us to consider two advertisements -- the first stating that a lawyer practices "personal injury law," and the second indicating that a lawyer is an "injury expert." Disciplinary Counsel has persuaded us that the use of the term "expert" in this context is likely to create an unjustified differentiation and expectation among those reading the advertisement about the results which can be achieved by a lawyer claiming to be an expert. Moreover, factually substantiating a claim that one is an "expert" is problematic.

The Panel is troubled by the ramifications if its previous decision leads lawyers to conclude that they can label themselves, to continue the example, as "injury experts" without violating the Rule. Other practitioners in the field would then have to choose between also claiming

to be "experts," or risk placing themselves at a competitive disadvantage. Upon reflection, we are persuaded that use of the term "expert" in this context benefits neither the Bar nor the consumer.

Conclusion

We therefore amend Decision No. 55 to find a violation of 7.1(b) of the Vermont Rules of Professional Conduct on the facts of the case presented, for the use of the term "injury experts" in the subject Yellow Pages advertisement. For this violation, for the reasons set forth in its previous opinion, the Panel approves the imposition of an ADMONITION by Disciplinary Counsel.

Dated: November 19th, 2003

HEARING PANEL NO. 1

/s/

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Barry E. Griffith, Esq., Chair

/s/

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Martha M. Smyrski, Esq.

/s/

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Stephen Anthony Carbine

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55 PRB

[4-Jun-2003]

STATE OF VERMONT

PROFESSIONAL RESPONSIBILITY BOARD

In re: PRB File No. 2002.093

Decision No. 55

This matter comes before us on a stipulation of facts, a joint recommendation that the Hearing Panel conclude that Respondent violated Rule 7.1 of the Vermont Rules of Professional Conduct, and a joint recommendation that the Hearing Panel approve a private admonition by Disciplinary Counsel, pursuant to Rule 8(A)(5)(a) of A.O. 9. The Hearing Panel accepts the facts. The recommended conclusion is accepted in part.

The recommended sanction is also accepted.

The Hearing Panel directs that Respondent be admonished by Disciplinary Counsel for placing an advertisement in the Yellow Pages, stating that the lawyers in the firm were "the experts in . . ." enumerated areas of law (emphasis supplied). We find that this statement to be in violation of Rule 7.1(c) of the Vermont Rules of Professional Conduct, which prohibits any advertisement or other communication which "compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated." We do not find the remaining portion of the ad to be in violation of Rule 7.1. The facts and a discussion of our conclusion appear below.

Facts

Respondent's firm placed an advertisement in the Yellow Pages advertising the services of the firm. The advertisement stated that the lawyers in the firm were "injury experts" and that they were "the experts in..." three enumerated areas of law. A complaint was made to the Professional Responsibility Program. After the complaint was filed, but before the matter was prosecuted by Disciplinary Counsel, the firm revised their ad for the following year by removing the quoted language. Their current advertisement does not violate the Rules of Professional Conduct. There was no evidence presented that anyone had been misled or deceived by this advertising, nor was there any evidence presented of the firm's lack

of experience in the advertised areas.

Conclusions of Law

Our decision is made under Rule 7.1 of the Rules of Professional Conduct, which provides as follows:

> 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 Rules of Professional Conduct or other law; or
>
> (c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

To place the Rule in context and to properly apply it, we have found it appropriate to consider the evolution of opinion about lawyer advertising by the courts, the practicing bar and the public. That evolution is traced, inter alia, in Wolfram, Modern Legal Ethics (1986) at 776-780.

While it may initially have been viewed as unseemly or vulgar, it was not until the early twentieth century that bar associations began to enact regulations declaring that lawyer advertising was unethical. These prohibitions tended to be strictly enforced until the 1970's, when challenges began to be raised on antitrust and free expression grounds.

State bar rules strictly prohibiting lawyer advertising were declared unconstitutional by the United States Supreme Court in Bates v. State Bar of Arizona, 433 U.S. 350 (1977). Bates involved a lawyer's newspaper advertisement offering "very reasonable fees" and listing fees for various matters, such as uncontested divorces. The Supreme Court held that such advertising is commercial speech, entitled to protection under the First Amendment. The decision was a narrow one and did not reach the issue of advertising that speaks to the quality of the legal representation. In his opinion Justice Blackman stated "[f]irst, we need not address the peculiar problems associated with advertising claims relating to the quality of legal services. Such claims probably are not susceptible of precise measurement or verification and, under some circumstances, might well be deceptive or misleading to the public, or even false." 433 U.S. 366. Thus

the Court did not close the door on all quality advertising, only that which is deceptive or misleading.

The Bar made two different responses to the Bates decision. The Model Code solution was to state in narrow terms what was permitted. The second approach, adopted by the Model Rules, to prohibit false or misleading advertising. Although Vermont at the time followed the Code of Professional Responsibility, our Supreme Court's response to the Bates decision was to adopt the language of the Model Rule, now incorporated in Rule 7.1, which we apply to this case.

In addressing the instant case, it is helpful to review one of the core arguments raised by the State Bar in the Bates case, and the Court's response. The Bar argued that advertising does not give enough information to the public to enable it to make an informed decision and is therefore inherently misleading. The Court's response is basically that some information is better than none, and that the public is able to evaluate advertising claims.

Moreover, the argument assumes that the public is not sophisticated enough to realize the limitations of advertising, and that the public is better kept in ignorance than trusted with correct but incomplete information. We suspect the argument rests on an underestimation of the

public. In any event, we view as dubious any justification that is based on the benefits of public ignorance. Although, of course, the bar retains the power to correct omissions that have the effect of presenting an inaccurate picture, the preferred remedy is more disclosure, rather than less. If the naiveté of the public will cause advertising by attorneys to be misleading, then it is the bar's role to assure that the populace is sufficiently informed as to enable it to place advertising in its proper perspective. Id. at 374-75. (Citations omitted)

Rule 7.1 indicates three ways in which an advertisement or other communication can be false or misleading. Clearly, a material misrepresentation of fact or law would qualify, but it is not suggested that provision applies here. Rather, we agree with the parties that the advertising claim that the lawyers in Respondent's law firm were "the experts" in enumerated fields of law violates Rule 7.1(c), which prohibits comparisons of the lawyers services with others unless such comparisons can be "factually substantiated." We find this is an implicit comparison and an implicit statement of superiority which violates the Rule. It is quite likely that even members of the bar would have difficulty identifying the expert in any given area of law. Such claims we believe do have a serious potential to mislead the consumer, since there is no objective way to verify the claim.

We now consider that portion of the ad which claimed that Respondent's firm were "injury experts." The Hearing Panel has given consideration to whether the cited advertisement violates Rule 7.1(b), which prohibits statements "likely to create an unjustified expectation about results the lawyer can achieve."(FN1) As pointed out by Disciplinary Counsel, there is authority to the effect that any use of the terms "expert" or "experience" is misleading per se. A decision advocating this position is Spencer v. Justices of the Supreme Court of Pennsylvania, 579 F.Supp. 880 (E.D.Pa.1984). Here the court upheld discipline in the case of a lawyer who, in his legal advertising, stated that he was an experienced pilot. The court stated that "a lawyer may describe the quality of his legal services only through the use of objective, verifiable terms such as the number of cases handled in a particular legal field or the number of years in practice." 578 F. Supp. at 888. See also Capoccia v. Comm. on Professional Standards, 59 U.S.L.W. 2445 (N.D.N.Y. 1990) (advertisement that attorney is a "smart, tough lawyer" who can get "fast, fair cash compensation" for auto accident victims is not false or misleading, given the state's no-fault law).

While realizing that the majority opinion in this area may be to the effect that any claims of expertise are inherently misleading and therefore in violation of the disciplinary rules, the Panel is not persuaded that the original intent of the Bates decision is to prohibit all such claims. Like Justice Blackmun, we believe that the public is savvy enough to sort

through such claims and that, especially in a state as small as Vermont, it is probably no less difficult to determine a lawyer's general reputation for competency than it is to determine how many cases of a certain type the lawyer has handled. Also, as Justice Blackmun suggested, the remedy for this perceived problem should be education by the Bar rather than prohibition by way of the disciplinary rules.

It is important to keep in mind the fact that Disciplinary Counsel in this case and courts in other jurisdictions have found a violation merely because of the potential to deceive or mislead the public. There is no evidence that anyone was actually misled by the ad in question, nor is there any claim that it was in fact untrue. Disciplinary Counsel concedes in her memorandum that attorneys in Respondent's firm do have substantial experience in the advertised areas. This is a fact that is not impossible for the consumer to discover.

We believe this case can be distinguished from the earlier Vermont advertising cases. In In re Anonymous Attorney, PCB Decision No. 38 (File No. 1990.052), a sole practitioner did business under the firm name "[Respondent] & Associates." Unlike the present case, this was not a claim of quality or experience. It was a public representation of something that was untrue and, while the Board held it to be misleading, it was so because it was false.

The 1995 case, In re Anonymous Attorney, PCB Decision No. 88 (File No.

1995.022), in which the lawyer advertised as "specializing in divorce and family law" can also be distinguished. The disciplinary rule in force at that time prohibited claims of specialization except in limited circumstances. The present rule on specialization, Rule 7.4, is much broader than the old rule and there is a distinct difference between the claim of being an "expert" and that of being a "specialist." The latter has always implied some certification or special training in addition to mere experience.

The Panel is also persuaded by the arguments raised in an article by Bernadette Miragliotta in the Annual Survey of American Law entitled "First Amendment: The Special Treatment of Legal Advertising." 1990 Ann. Surv. Am. L. 597, (1991). The author reviews the history of judicial response to legal advertising since the Bates decision. She concludes that advertising is of benefit to the consumer, and argues for reducing restriction on quality claims. As she points out, lawyers are competing in the economic marketplace in the same way as other providers of goods and services. No advertising can present a complete picture of the nature and quality of services, and the public's skills at sorting out quality claims in other consumer areas can be applied equally to the interpretation of lawyer advertising. If we recognize the ability of the consumer to make judgments about advertising, our response should be to encourage rather than restrict the amount of information flowing to the public. The author also makes the point that advertising provides a source of information to the poor and the disadvantaged who have fewer peers who are consumers of legal services, and

are thus less able to obtain referrals through word of mouth. (Page 631).

For these reasons we find that the claim that the attorneys were "experts" is not a violation of Rule 7.1 and that portion of the charge is dismissed.

Sanctions

Administrative Order No. 9.

Rule 8(A)(5)(a) of Administrative Order No. 9 provides that an admonition may be imposed with the consent of the Respondent and the approval of the Hearing Panel when there is little or no injury to a client, the public, the legal system, or the profession, and where there is little likelihood by repetition by the lawyer. The conduct in this case meets these criteria.

Prior Vermont Cases

In both of the Vermont opinions cited above the sanction was admonition. Here, as in those cases, there is no evidence of injury to the public or intent to violate the advertising rules. In addition, this is a case of first impression in Vermont under the present rule, Rule 7.1(c).

ABA Standards

Section 7.0 of the ABA Standards for Imposing Lawyer Sanctions addresses the appropriate sanction for attorneys who violate "duties owed as a professional," such as the duty to abide by the advertising rules. Violation of these duties is considered less likely to cause injury to a client, to the public, or to the administration of justice, and accordingly, lesser sanctions are appropriate. ABA Standards, §7.0. Under the ABA Standards, §7.4 "admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the lawyer's conduct violates a duty owed to the profession, and causes little or no actual or potential injury to a client, the public, or the legal system." There was no evidence of intent to violate the disciplinary rules. There is no evidence of harm, and based upon Respondent's prompt revision of the advertisement, there is little likelihood of further violations.

Conclusion

For the reasons stated, the Panel APPROVES the imposition of an ADMONITION by Disciplinary Counsel.

Dated: June 4, 2003

FILED: June 4, 2003

PRB HEARING PANEL NO. 1

/s/

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Barry E. Griffith, Esq. Chair

/s/

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Martha M. Smyrski, Esq.

/s/

_____

Stephen Anthony Carbine

Footnotes

FN1. It was suggested to the Hearing Panel that the subject advertisement "might create an unjustified expectation about the results the law firm could achieve." There is a significant difference between saying that a given statement might be misleading, and establishing that the communication is likely to mislead, which is the standard of Rule 7.1(b).

In re PRB Docket No. 2002.093 (2003-519)

2005 VT 2

[Filed 11-Jan-2005]

ENTRY ORDER

2005 VT 2

SUPREME COURT DOCKET NO. 2003-519

JUNE TERM, 2004

In re PRB Docket No. 2002.093	}	APPEALED FROM:
	}	
	}	
	}	Professional Responsibility Board
	}	
	}	
	}	DOCKET NO. PRB 2002.093

In the above-entitled cause, the Clerk will enter:

¶ 1. We review, sua sponte, a Professional Responsibility Board Hearing Panel decision that respondent attorney placed a misleading advertisement of professional services, in violation of Rule 7.1 of the Vermont Rules of Professional Conduct, and should be privately admonished as a consequence.(FN1) We affirm the hearing panel's finding and penalty recommendation.

¶ 2. The facts, as stipulated by the parties and found by the hearing panel, may be briefly summarized. Respondent placed an advertisement in the Yellow Pages describing his law firm-in large capital letters placed at the top of the advertisement-as "INJURY EXPERTS." Below this description was a list of the firm's attorneys and a second, smaller caption reading: "WE ARE THE EXPERTS IN" followed by three enumerated areas of law. A complaint concerning the advertisement was filed with the Board, resulting in the firm's decision to revise the advertisement the following year by removing the quoted language.

¶ 3. Based on respondent's and disciplinary counsel's joint recommendation, the hearing panel concluded that respondent had violated Rule 7.1(c), by placing an advertisement that implicitly compared his firm's services with those provided by other lawyers in a way that can not be "factually substantiated." The panel noted that the phrase "the experts" was "an implicit statement of superiority" as compared with other firms, and had a "serious potential to mislead the consumer, since there is no

objective way to verify the claim." The panel further concluded that the alternative description of the firm as "injury experts" was not "likely to create an unjustified expectation about results the lawyer can achieve," and therefore was not misleading under Rule 7.1(b). In response to disciplinary counsel's subsequent motion, however, the panel amended its decision, ruling that the phrase "injury experts" was "likely to create an unjustified differentiation and expectation among those reading the advertisement about the results which can be achieved by a lawyer claiming to be an expert" that could not be objectively substantiated, and therefore was a violation of the Rule. We ordered review on our own motion, under A.O. 9, Rule 11(E), to address an issue of substantial and continuing import to the bar and the public at large.

¶ 4. On review by this Court, a disciplinary hearing panel's findings, "whether purely factual or mixed law and fact, are upheld if they are clearly and reasonably supported by the evidence." In re Sinnott, 2004 VT 16, ¶ 10, 15 Vt. L. W. 63, 845 A.2d 373 (internal citations omitted). Similarly, while we retain ultimate authority over the decision as to sanctions, we nevertheless give deference to the panel's recommendation. In re Anderson, 171 Vt. 632, 634, 769 A.2d 1282, 1284 (2000) (mem.).

¶ 5. Lawyer advertising is not a subject that we have previously addressed in the disciplinary context, although the last several decades have witnessed substantial regulatory changes both nationally and in many states-including our own-resulting in large measure from a series of

seminal United States Supreme Court cases. Bates v. State Bar of Arizona, 433 U.S. 350, 383 (1977) is the landmark decision in which the high court held that lawyer advertising is a form of commercial speech protected by the First Amendment and therefore not subject to "blanket suppression." The Supreme Court recognized, however, that states may adopt regulations to ensure that advertising is not "false, deceptive, or misleading." Id. Thus, while holding that truthful statements regarding lawyer fees-the precise issue in Bates-were permissible, the Court was careful to acknowledge that

> because the public lacks sophistication concerning legal services, misstatements that might be overlooked or deemed unimportant in other advertising may be found quite inappropriate in legal advertising. For example, advertising claims as to the quality of services-a matter we do not address today-are not susceptible of measurement or verification; accordingly, such claims may be so likely to be misleading as to warrant restriction.

Id. at 383-84 (footnote omitted).

¶ 6. The high court refined its analysis of attorney advertising several years later in In re R.M.J., 455 U.S. 191, 205 (1982), holding that the use of truthful, nondeceptive terminology to describe an attorney's field of practice that was not on the state's approved list ("property"

instead of "real estate" law) could not be prohibited. Echoing Bates, however, the Court again cautioned that "claims as to quality . . . might be so likely to mislead as to warrant restriction." Id. at 201. The "quality" issue was directly joined in Peel v. Attorney Registration & Disciplinary Comm'n of Ill., 496 U.S. 91 (1990). The issue there was whether a state could discipline a lawyer for truthfully advertising that he was a "Certified Civil Trial Specialist by the National Board of Trial Advocacy" under a rule prohibiting lawyers from advertising themselves as "certified" or as "specialists" except in limited circumstances. Id. at 96-97. A plurality of the Court, noting that the advertisement was truthful and objectively verifiable, held that it was neither inherently nor potentially misleading and therefore could not be prohibited. Id. at 110-11. Justice Marshall, in a concurring opinion joined by Justice Brennan, observed that the statement had the potential to mislead nonlawyers unfamiliar with the certifying agency, and suggested that rather than banning such statements, states could require supplemental "warning[s] or disclaimer[s]" explaining, for example, that the National Board of Trial Advocacy is a private organization not sanctioned by the state or federal government, to assure that the consumer was not misled. Id. at 117 (Marshall, J., concurring).

¶ 7. The American Bar Association Model Rules of Professional Conduct (Model Rules), which many states, including Vermont, have adopted, have been amended a number of times largely to conform to the high court's decisions. See In re Gadbois, 173 Vt. 59, 63, 786 A.2d 393, 397 (2001)

(noting that Vermont adopted the Model Rules as of September 1, 1999); see generally Note, Lawyer Certification and Model Rule 7.4: Why We Should Permit Advertising of Speciality Certifications, 5 Geo. J. Legal Ethics 939, 940-42 (1992) (tracing case law development and model rule changes). Thus, Vermont's general rule on attorney advertising, Rule 7.2, permits lawyers to advertise their services through such public media as telephone directories, newspapers, television, and radio, subject to the requirements of Rules 7.1 and 7.3. Rule 7.1 prohibits "false or misleading" communications about the lawyer or the lawyer's services, and Rule 7.3 regulates direct client contact and solicitation. In addition, Rule 7.4 specifically regulates communications concerning a lawyer's area of practice, providing that a lawyer may communicate the fact that he or she "does or does not practice in particular fields of law." Under Rule 7.4(c), however, a lawyer may not "state or imply that the lawyer has been recognized or certified as a specialist in a particular field of law" except in limited circumstances involving patent and admiralty lawyers, or where the lawyer has been certified as a specialist by a "named organization," provided that the advertisement contains a disclaimer stating that there is no procedure in Vermont for approving certifying organizations.(FN2)

¶ 8. Considered in light of the foregoing decisional and regulatory framework, we have little difficulty here in affirming the panel's findings. As the case law and rules make clear, in the area of communications concerning attorney "quality" or "specialization" the

underlying principle is that consumers should be free to infer for themselves an attorney's level of quality or expertise so long as the information conveyed is truthful, objectively verifiable, and not otherwise misleading. Direct claims of expertise that are not truthful and factually verifiable, however, may be prohibited or restricted as unduly misleading. See, e.g., Spencer v. Honorable Justices of the Sup. Ct. of Pa., 579 F. Supp. 880, 887 (E.D. Pa. 1984) (rejecting constitutional challenge to attorney advertising regulation because "[c]laims using such terms as 'experienced,' 'expert,' 'highly qualified,' or 'competent' are difficult for a layman to confirm, measure, or verify"); Office of Disciplinary Counsel v. Furth, 754 N.E.2d 219, 225, 231-32 (Ohio 2001) (attorney's web site claiming to be "passionate and aggressive advocate" violated rule prohibiting unverifiable self-laudatory statements); Medina County Bar Ass'n v. Grieselhuber, 678 N.E.2d 535, 537 (Ohio 1997) (lawyer's yellow pages advertisement claiming "We Do It Well" violated rule against communication of claims that could not be verified). Plainly, therefore, respondent's advertisement proclaiming his firm to be "injury experts" and "the experts" in certain enumerated fields of law falls squarely within that category of qualitative advertising claims that are not susceptible of measurement or verification. Thus, as the panel found, they are "likely to create an unjustified expectation and differentiation among those reading the advertisement about the results which can be achieved by a lawyer claiming to be an expert," in violation of Rule 7.1.

¶ 9. Respondent does not challenge the panel's finding that the

description of his firm as "the experts" in certain enumerated areas of practice was an implicit comparison with other lawyers' services that was not factually verifiable, in violation of Rule 7.1(c). He asserts, however, that his use of the phrase "injury experts" was permissible under the rules because it was merely the equivalent of describing the firm as "injury specialists." Respondent notes, in this regard, that the official Comment to Rule 7.4 indicates that "[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 to communications concerning a lawyer's services." Vt. Rules of Prof'l Conduct, R. 7.4 cmt. We find the argument to be unpersuasive for two reasons. First, the terms "specialist" and "specialty" are employed in the Comment to Rule 7.4 to refer solely to the subject of the Rule, i.e., the communication of "the fact that the lawyer does or does not practice in particular fields of law." Id. at R. 7.4 (emphasis added). Nothing in the Comment suggests that it was intended to sanction the use of such qualitative terms as "expert" or "expertise."

¶ 10. Furthermore, to the extent that the term "specialist" may imply expertise, as well it might to the lay consumer (FN3), we note that the Comment expressly subjects such communications to the "false and misleading" standard of Rule 7.1. Accordingly, while the issue is not directly raised, we take the opportunity to observe that any attorney advertisement using the term "specialist" or "specialty" in this sense

should be qualified by a disclaimer that the attorney has not been certified as a specialist by any recognized organization, in order to avoid potential confusion to the consumer and to comport with Rule 7.1's prohibition against misleading communications. See R.M.J., 455 U.S. at 201 (noting that "a warning or disclaimer might be appropriately required . . . in order to dissipate the possibility of consumer confusion or deception"); Mezrano v. Ala. State Bar, 434 So. 2d 732, 734-35 (Ala. 1983) (upholding rule requiring disclaimer in attorney advertising stating that "[n]o representation is made about the quality of the legal services to be performed or the expertise of the lawyer performing such services") (quotations omitted); Miss. Bar v. Attorney R., 649 So. 2d 820, 822 (Miss. 1995) (upholding requirement that attorney advertisement listing areas of practice include disclaimer that it "does not indicate any certification or expertise therein"); Walker v. Bd. of Prof'l Responsibility of the Sup. Ct. of Tenn., 38 S.W.3d 540, 548-49 (Tenn. 2001) (upholding requirement that attorneys who advertise with regard to any area of law but are not certified in that area include disclaimer that they are "[n]ot certified as a . . . specialist").

¶ 11. Finally, both respondent and disciplinary counsel accept the panel's recommendation, based on the parties' stipulation, that we impose a private admonition. In arriving at this sanction, the panel looked to A.O. 9, Rule 8(A)(5)(b), which authorizes an admonition in cases of minor misconduct, when there has been little or no injury to a client, the public, the legal system, or the profession, and when there is little

likelihood of repetition by the lawyer. The panel also considered the American Bar Association Standards on Imposing Sanctions § 7.4, which provides that admonitions are appropriate when a lawyer has engaged in an isolated instance of negligence with little or no resulting harm to the client, the public, or the legal system. The panel determined that the conduct in this case met these criteria, and we discern no basis to question the panel's findings or to impose a different or additional sanction.

Affirmed.

BY THE COURT:

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Denise R. Johnson, Associate Justice

_____

Marilyn S. Skoglund, Associate Justice

_____

Frederic W. Allen, Chief Justice (Ret.),

Specially Assigned

Note: Chief Justice Amestoy was present when the case was submitted on the

briefs but did not participate in this decision.

Footnotes

FN1. Rule 7.1 provides as follows:

> 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 Rules of Professional Conduct or other law; or
>
> (c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

FN2. The disclaimer is not required if "the named organization has been

accredited by the American Bar Association to certify lawyers as specialists in a particular field of law." Rule 7.4(c).

FN3. See, e.g., Fla. Bar v. Herrick, 571 So. 2d 1303, 1307 (Fla. 1991) ("By characterizing himself as a specialist, an attorney does more than merely indicate that he practices within a particular field. The term 'specialist' carries with it the implication that the attorney has special competence and expertise in an area of law."); In re Robbins, 469 S.E.2d 191,193 (Ga. 1996) (upholding State Bar's assertion that use of the term "specialist" is misleading based on evidence that "a substantial percentage of the public expects lawyers claiming to be 'specialists' to have certain qualities which non-specialists in the same field do not have, and to do a better job") (quotations omitted).