



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in January 2010. Please see the 2010 Illinois Rules of Professional Conduct 7.1 and 7.4. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

Opinion No. 03-03 January 2004

- Topic:** Letterhead, designation as member of Capital Litigation Trial Bar
- Digest:** Resolution of the conflict between Supreme Court Rule 714 and Rule 7.4 favors Rule 714 as the more recent. A lawyer may list the certification "Capital Litigation Trial Bar" on letterhead without the disclaimer that "the Supreme Court of Illinois does not recognize certifications of specialties in the practice of law."
- Ref.:** Supreme Court Rule 714
Illinois Rules of Professional Conduct, Rules 7.1 and 7.4
People v. Richmond, 188 Ill.2d 376, 721 N.E.2d 534 (1999)
In re Estate of Rennick, 181 Ill.2d 395, 692 N.E.2d 1150 (1998)
Williams v. Illinois State Scholarship Comm'n, 139 Ill.2d 24, 563 N.E.2d 465 (1990)
In re Gary Peel, 126 Ill.2d 397, 534 N.E.2d 980 (1989); rev'd by *Peel v. ARDC*, 496 U.S. 91, 110 S.Ct. 2281 (1990)
Grenier & Co. v. Stevenson, 42 Ill.2d 289, 247 N.E.2d 606 (1969)
Spaulding School Dist. No. 58 v. Waukegan City School Dist. No. 61, 18 Ill.2d 531, 164 N.E.2d 63 (1960)

INQUIRY

Illinois Rule of Professional Conduct 7.4(c) prohibits an attorney from identifying a certification without including specific language disclaiming their recognition by the Court. Does this

disclaimer requirement extend to the members of the Capital Litigation Trial Bar? Since it was the Supreme Court that authorized and organized this specific category, would such a designation on a letter be a violation of the current Rule?

FACTS

Former Rule 2-105(a)(3) stated "no lawyer may hold himself out as "certified" or as a "specialist." This Rule was challenged by *In Re Gary Peel*, 126 Ill.2d 397, 534 N.E.2d 980 (1989); Peel contended that the rule was unconstitutional as applied to attorneys' advertising under the First Amendment's guarantee of free speech. In its opinion, the Illinois Supreme Court noted that Rule 7.4 of the ABA's Model Rules of Professional Conduct contained a prohibition on a lawyer holding himself out as a specialist. Peel appealed and the United States Supreme Court reversed, finding that Peel's public censure for violating Rule 2-105(a)(3) violated the First Amendment. *Peel v. ARDC*, 496 U.S. 91, 110 S.Ct. 2281 (1990).

The Illinois Supreme Court adopted Rule 7.4 in 1990 and, after *Peel*, amended the Rule. As amended, the first sentence of Rule 7.4(b) states, "The Supreme Court of Illinois does not recognize certifications of specialties in the practice of law, nor does it recognize certifications of expertise in any phase of the practice of law by any agency, governmental or private, or by any group, organization or association." The amended rule had a new subparagraph (c):

(c) Except when identifying certificates, awards or recognitions issued to him by an agency or organization, a lawyer may not use the terms "certified," "specialist," "expert," or any other, similar terms to describe his qualifications as a lawyer or his qualifications in any subspecialty of law. If such terms are used to identify any certificates, awards or recognitions issued by any agency, governmental or private, or by any group, organization or association, the reference must meet the following requirements:

(1) the reference must be truthful and verifiable and may not be misleading in violation of Rule 7.1;

(2) the reference must state the Supreme Court of Illinois does not recognize certifications of specialties in the practice of law and that the certificate, award or recognition is not a requirement to practice law in Illinois.

In 2001, the Illinois Supreme Court adopted Supreme Court Rule 714, which provides:

(a) Statement of Purpose. This rule is promulgated to insure that counsel who participate in capital cases possess the ability, knowledge and experience to do so in a competent and professional manner. To this end, *the Supreme Court shall certify* duly licensed attorneys to serve as members of the Capital Litigation Trial Bar. Rule 714(a) (emphasis added).

OPINION

Although no Illinois authority was found with respect to resolving the apparent conflicts between two Illinois Supreme Court Rules, Supreme Court Rule 2(a) "makes it clear that the same principles that govern the construction of statutes are applicable to the rules," Committee Comments. *People v. Richmond*, 188 Ill.2d 376, 721 N.E.2d 534 (1999) ("The same principles that govern the interpretation of statutes govern the interpretation of rules of this court."); *In re Estate of Rennick*, 181 Ill.2d 395, 692 N.E.2d 1150 (1998) ("In interpreting a supreme court rule, we apply the same

principles of construction that apply to a statute.")

The initial rule of statutory construction is that whenever possible, two statutes in apparent conflict should be read in harmony with each other. *Williams v. Illinois State Scholarship Comm'n.*, 139 Ill.2d 24, 563 N.E.2d 465 (1990) ("We presume that statutes which relate to one subject are governed by one spirit and a single policy, and that the legislature intended the enactments to be consistent and harmonious. Even when apparent conflicts exist, we are to construe such statutes in harmony with each other, if reasonably possible.") If the statutes are in direct conflict and cannot be construed in harmony with each other, ordinarily the more recent takes precedence over the earlier. *Id.* 139 Ill.2d at 57, 563 N.E.2d at 480; *Grenier & Co. v. Stevenson*, 42 Ill.2d 289, 247 N.E.2d 606 (1969) ("It is a recognized principle of statutory construction that, where two statutes are irreconcilably repugnant, the later abrogates the earlier to the extent they are inconsistent, since it cannot be supposed that the General Assembly intends to enact and enforce laws which are contradictory.") However, if the latter is general and the earlier is specific, then the court will apply the specific. *Spaulding School District No. 58 v. Waukegan City School District No. 61*, 18 Ill.2d 351, 164 N.E.2d 63 (1960).

It is difficult to read the language of Rule 714, "the Supreme Court shall certify" in harmony with the prohibition of Rule 7.4's "the Supreme Court of Illinois does not recognize certifications of specialties in the practice of law...." One could argue that Rule 7.4 is more specific in the sense it focuses on what a lawyer may communicate to the public about his practice of law, but Rule 714 specifically identifies a certification that is not only recognized by the Illinois Supreme Court, but a process in which the Court itself grants the certification. In this context, Rule 714 is more recent and should be applied allowing the inquirer to list the certification on his letterhead without including the disclaimer reference, "the Supreme Court of Illinois does not recognize certifications of specialties in the practice of law."

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