



# 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.

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## Opinion No. 03-05 January 2004

Topic: Attorney Advertising; Attorney listing of non-legal accreditations

Digest: Attorney may list non-legal accreditation on attorney business card.

Ref: Illinois Rules of Professional Conduct 7.1(a) and 7.4

ISBA Advisory Opinions on Professional Conduct No. 90-32

*Ibanez v. Florida Department of Business and Professional Regulation, Board of Accountancy*, 512 U.S. 136, 114 S.Ct. 2084 (1994).

*Peel v. Attorney Registration and Disciplinary Commission of Illinois*, 496 U.S. 91, 110 S.Ct. 2281 (1990).

## FACTS

An associate attorney with Firm A and is also a Certified Trust Financial Advisor (CTFA), having received that accreditation from the Institute of Certified Bankers (ICB).

Rule 7.4 (c) limits the use of certifications as they relate to “qualifications as a lawyer,” or “qualifications in any subspecialty of the law”.

### **QUESTION**

Because the CTFA certification is not a subspecialty of the law, is it permissible under Rule 7.4 of the Illinois Rules of Professional Conduct for an attorney to list the CTFA certification on the attorney’s business card?

### **OPINION**

Rule 7.4 states that 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 the law. The rule further provides that if any of these terms are used to identify certificates issued by an agency, any group, or association, the reference must be truthful, verifiable and not misleading. Additionally, the reference must provide a disclaimer stating, in summary, that the Supreme Court of Illinois does not recognize certifications and that the certification is not necessary for the practice of law in Illinois.

The issues arising under this rule are whether the designation would be a qualification or subspecialty of the law, whether it is misleading, and whether it would violate any rules on dual professions. The cases and opinion below suggest that it is permissible to list the CTFA designation on a business card.

With respect to dual professions, Opinion No. 90-32 first noted in its analysis that, prior to July 1984, Rule 2-102(c) of the former Illinois Code of Professional Responsibility prohibited a lawyer from utilizing stationery, office signs or professional cards indicating a dual profession. Opinion 90-32 then noted that prior Opinions have viewed the 1984 repeal of this rule as permitting the practice of dual professions from the same office under both the former Rules of Professional Responsibility and the 1990 Rules of Professional Conduct.

With respect to the prohibition against listing subspecialties of the law in Rule 7.4, the committee opines that CTFA<sup>1</sup> does not fall within this prohibition because CTFA certification is neither a subspecialty of the law nor does it describe a qualification as a lawyer. Notwithstanding, we do believe that any attorney advertising which includes a

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<sup>1</sup> The Institute of Certified Bankers, the credentialing authority for the CFTA is an affiliate of the American Bankers Association. In order to be authorized to use the CFTA credential, the individual must meet the experience, education, ethics and examination requirements determined to be competency measures for personal trust professionals. This requires a minimum of three (3) years experience in personal trust as well as completion of ICB approved personal training program or five (5) years in personal trust and a bachelor degree or ten (10) years experience in personal trust; a letter of recommendation from a manager, acceptance of a Professional Code of Ethics and successful completion of the CFTA examination of 200 multiple choice questions in the areas of (i) Fiduciary Responsibilities and Trust Activities, (ii) Personal Finance, Insurance and Estate Planning, (iii) Tax Law and (iv) Investment Management. Continued certification requires a minimum of 45 hours of continuing education every three (3) years. [www.aba.com/ICBCertifications/CFTA.htm](http://www.aba.com/ICBCertifications/CFTA.htm)

CTFA certification must still comply with the mandates of Rule 7.1, which prohibits misleading advertising.

With respect to whether or not the CTFA designation is misleading, the United States Supreme Court's decision in *Ibanez v. Florida Department of Business and Professional Regulation, Board of Accountancy*, 512 U.S. 136, 114 S.Ct. 2084 (1994) is instructive. In *Ibanez*, a Florida Attorney was disciplined by the Florida Board of Accountancy for engaging in "false, deceptive and misleading advertising by referring to her credentials as a "Certified Public Accountant" (CPA) and a "Certified Financial Planner" (CFP) on her business card and in her yellow pages listing.

The Supreme Court observed that the Board correctly acknowledged that the use of the CPA and CFP designations qualify as "commercial speech." The State may ban such speech only if it is false, deceptive or misleading, citing *Zauderer v. Office of the Disciplinary Counsel of the Supreme Court of Ohio*, 471 U. S. 626,638, 105 S. Ct. 2265, 2275 (1985) and *Peel*. The Court did not agree with the Florida Accountancy Board's contention that the word "Certified" in the CFP designation would mislead the public into believing that state approval and recognition of the designation existed.

The U.S. Supreme Court further rejected the argument that such label was "potentially misleading," noting that the Board did not present sufficient evidence demonstrating that the CFP designation would mislead rather than inform. Relevant to the Court's decision were the standards for CFP licensure and the well-established, protected federal trademarks (CPA and CFA) that have been described as "the most recognized designations in the financial planning field." *Id* at 146.<sup>2</sup> The Court ultimately found that the Board's reprimand should not be upheld.

It is noteworthy that in the *Ibanez* opinion the Court cited its decision in *Peel v. Attorney Registration and Disciplinary Commission of Illinois*, 496 U.S. 91, 110 S.Ct. 2281 (1990), where the Court held that "only false, deceptive or misleading commercial speech may be banned". In *Peel*, the Attorney Registration and Disciplinary Commission of Illinois found that an attorney violated former rule 2-105(a)(3) of the Illinois Code of Professional Responsibility by mentioning his National Board of Trial Advocacy (NBTA) certification on his letterhead. This rule, a predecessor of Rule 7.4, prohibited an attorney from holding himself out as 'certified' or a 'specialist.' The United States Supreme Court split in a 4-1-1-3 decision in which the plurality found that there was an absence of evidence that the letterhead was misleading. The court observed, "A state may not, however, completely ban statements that are not actually or inherently misleading, such as certification as a specialist by bona fide organizations such as NBTA." *Peel* at 2292. Similar to the analysis in *Ibanez*, the plurality also noted that the NBTA had "rigorous requirements" for certification.

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<sup>2</sup> "It is therefore significant that her use of the designation CFP is considered in all respects appropriate by the Florida Bar. See Brief for Florida Bar as *Amicus Curiae* 9-10 (noting that the Florida Bar Rules of Professional Conduct Rule 4-7.3, "specifically allo[w] Ibanez to disclose her CPA and CFP credential [and] contemplate the Ibanez must provide this information to prospective clients if relevant)" *Id*.

Applying the principles of these cases and Rule 7.1, we believe that CTFA designation, having satisfied the eligibility requirements of the Institute of Certified Bankers, would not be misleading and may be identified on a business card.