

ETHICS ADVISORY OPINION

15-03

UPON THE REQUEST OF A MEMBER OF THE SOUTH CAROLINA BAR, THE ETHICS ADVISORY COMMITTEE HAS RENDERED THIS OPINION ON THE ETHICAL PROPRIETY OF THE INQUIRER'S CONTEMPLATED CONDUCT. THIS COMMITTEE HAS NO DISCIPLINARY AUTHORITY. LAWYER DISCIPLINE IS ADMINISTERED SOLELY BY THE SOUTH CAROLINA SUPREME COURT THROUGH ITS COMMISSION ON LAWYER CONDUCT.

Factual Background:

Lawyer is not in private practice. Rather, Lawyer works for an entity that collects, processes, and stores private information. The human resources department within Lawyer's employer is approving position descriptions for a Privacy Officer and Privacy Liaison in response to heightened awareness of data security breaches.

Lawyer has become a member of the IAPP (International Association of Privacy Professionals). IAPP membership includes both lawyers and non lawyers. The IAPP is a not-for-profit association for privacy professionals worldwide that was founded in 2000. It is the largest global information privacy organization in the world, with more than 12,000 members in 78 countries.

Lawyer took and passed two IAPP examinations and obtained a certification as a Certified Information Privacy Professional/US ("CIPP/US"). The CIPP/US is the preeminent professional certification offered in information privacy today. Taking the exams is somewhat costly and the exams are designed to be challenging, and require study and preparation. The CIPP/US examinations test knowledge of:

- Federal privacy laws, including HIPAA, Fair Credit Reporting Act (FCRA) and Fair and Accurate Credit Transactions Act (FACTA), Gramm-Leach-Bliley Act and the Children's Online Privacy Protection Act (COPPA).
- Various state information privacy and data breach notification laws.
- U.S. federal regulation of information sharing and marketing limitations, including Do Not Call, CAN-SPAM and the Junk Fax Prevention Act (JFPA).

- Employment-related privacy laws, plus best practices for privacy and background screening, employee testing, workplace monitoring, employee investigation and termination of employment.

Only a small number of attorneys are CIPP certified, as the certification primarily is sought by Chief Privacy Officers, information technology specialists, information security leaders and other industry professionals. Lawyer wants to list “Lawyer Name, CIPP/US” in Lawyer’s e mail signature block.

Question Presented:

May Lawyer include the CIPP/US designation after Lawyer’s name in Lawyer’s email signature block?

Summary:

Lawyer may include the designation “CIPP/US” in Lawyer’s email signature block and other communications since the designation truthfully reflects a recognized professional certification available to both lawyers and non-lawyer, is objectively verifiable, and is not misleading.

Opinion:

Lawyer’s use of the designation “CIPP/US” in Lawyer’s email signature block or other communications complies with the ethics rules regarding lawyer advertising.

It complies with Rule 7.1(a) as it is neither false nor misleading. The designation is given by a recognized association. The designation is granted by the association based on objectively verifiable criteria after examination and not upon mere self-designation by the lawyer or mere membership in the association.

It complies with Rule 7.2(a). The rule allows advertising “through written, recorded or electronic communication [which would include the email communication that is the subject of the inquiry], including public media.” The use of the designation is predominately informational. It alerts a person that Lawyer has taken and passed examinations in privacy protection topics under the auspices of the IAPP.

It complies with Rule 7.4. In S.C. Bar Ethics Adv. Op. 93-37, the committee opined that that an attorney who was licensed as both an attorney and a Certified Professional Accountant (CPA) could note both professional designations on business cards and letterhead despite the prohibition in Rule 7.4(b) against using “any form of the words ‘certified,’ ‘specialist,’ ‘expert,’ or

‘authority’ when describing areas of limited or concentrated practice. In this matter, Lawyer is not advertising specific fields of practice, but rather is using the acronym for a specific, objectively verifiable certification given, like certification as a public accountant, to persons who may or may not also be attorneys. See also S.C. Bar Ethics Adv. Op. 96-29 (stating that an attorney may note that he or she is a certified mediator on firm letterhead and by compliant with Rule 7.4(b)); *Peel v. Illinois Attorney Registration and Disciplinary Commission*, 496 U.S. 83 (1990)(holding that a lawyer has a constitutionally protected right to advertise truthfully his or her certification by a bona fide organization).