

Ethics Opinion 2022-04

Question Presented: What must a Lawyer do if a newspaper or other reporter misquotes the Lawyer's statement in a manner that gives the impression the Lawyer claims to have a certain "expertise" or other certification when the Lawyer does not.

Short Answer: The Lawyer is not responsible for the media's misquoting of the Lawyer's statements about the Lawyer's practice.

Rules Implicated: 7.4

FACTS

Lawyer was contacted by a reporter about a local lawsuit. The Lawyer spoke with the reporter "on background" regarding the lawsuit, before agreeing to give the reporter a few quotes. The Lawyer did not state or imply that Lawyer was an "expert" or "legal expert," nor did the Lawyer state or imply that Lawyer had a certain "specialty" or "specialization." However, the article the reporter published stated the Lawyer had claimed to have those qualifications. Lawyer does not have an official certification in any area of practice. The article also included statements that appeared to be accurately quoted or paraphrased from Lawyer's website.

Lawyer asks whether Lawyer has an ethical obligation under Rule 7.4 of the South Dakota Rules of Professional Conduct to ask the reporter to retract or correct the article.

ANALYSIS

Lawyer is concerned with Rule 7.4(e)'s proscription against a lawyer stating or implying "that a lawyer is certified as a specialist in a particular field of law" unless the Lawyer is actually certified in that field by an approved organization.

Assuming the Lawyer did not make or imply the statements the reporter attributed to the Lawyer regarding the Lawyer's "expertise" or "specialization," then Lawyer will not violate the Rule by not asking the reporter to correct the errors, even assuming the erroneous statements would violate Rule 7.4 in the first instance. Lawyer is not responsible for the reporter's error. Lawyer should, however, ensure that any statements on Lawyer's website, such as the ones the reporter quoted, are accurate.