



**New York State Bar Association
Committee on Professional Ethics**

Opinion 1173

Topic: Advertising and Letterhead: Listing of N.Y. admission on out-of-state letterhead

Digest: A New York lawyer admitted in one or more other jurisdictions may properly list the lawyer’s admission to the New York bar on professional or law firm letterhead, even though the lawyer does not maintain a law office in New York, provided the lawyer makes clear to prospective and existing clients the limits on the lawyer’s ability to practice within this State.

Rules: 7.1(a)(1); 7.1(b)(1); 7.5(a)

FACTS

1. The inquirer is a lawyer admitted to practice in New York and in an adjacent jurisdiction. The inquirer is affiliated solely with a law firm with offices only in that adjacent state, and none in New York.

QUESTION

2. May a lawyer admitted to practice in two or more jurisdictions (including New York) permissibly list the lawyer’s admission in New York, even though the lawyer does not have a law office in New York?

OPINION

3. Our answer is yes, with a caveat. Lawyers and law firms are permitted to advertise their services provided that their advertisements do not contain statements or claims that are “false, deceptive or misleading.” RPC 7.1(a)(1). Rule 7.1(b)(1) of the N.Y. Rules of Professional Conduct (the “Rules”) says that a lawyer may properly include in an advertisement information concerning a lawyer’s bar admissions. In N.Y. State 637 (1992), which was decided under the predecessor of the Rules, the Code of Professional Responsibility (the “Code”), we said that “a lawyer who is admitted to practice law in another state may indicate this fact on a letterhead or card. DR 2-101(C)(1) [the forerunner of Rule 7.1 (b)(1)] permits the inclusion of ‘dates of admission to any bar’ in lawyer publicity. Even without this provision, there is nothing inherently false or misleading in truthfully identifying the jurisdictions in which a lawyer is licensed to practice law.” No difference exists between the Rules and the Code on this point.

4. Rule 7.5(a) provides that lawyers and law firms may use websites, business cards, professional announcements and office signs, as well as letterhead and similar professional notices, provided that they “do not violate any statute or court rule and are in accordance with Rule 7.1.” Rule 7.5(a) is substantially similar to DR 2-102(a) of the Code. The fundamental principle for all forms of attorney advertising and other communications with the public is that they may not be “false, deceptive or misleading.” In our view, a letterhead accurately stating that a lawyer is a “Member of the Bars of [X State] and New York is not engaged in false, deceptive or misleading conduct.

5. Our sole caveat is that a lawyer listing admission in New York but lacking an office located in New York must explain to prospective and existing clients the limits that the absence of a New York office imposes on the lawyer to engage in practice in New York. For example, Judiciary Law § 470 requires that a lawyer practicing in New York must have a physical office located here – that is, a brick-and-mortar workplace – and, in *Schoenefeld v. Schneiderman*, 821 F.3d 273 (2nd Cir. 2016), the Court of Appeals held that this requirement does not violate the U.S. Constitution. Hence, while a lawyer may list a New York admission on an out-of-state firm’s letterhead (and other advertising), the lawyer who wishes to practice within our borders must fully comply with all legal and regulatory provisions governing practice within this State.

6. Nothing in this opinion is intended to address the ethics of the inquirer’s proposed conduct under the rules governing lawyers in the other jurisdiction where the lawyer is admitted.

CONCLUSION

7. A New York lawyer admitted in one or more other jurisdictions may properly list the lawyer’s admission to the New York Bar on professional or law firm letterhead, even though the lawyer does not maintain a law office in New York, provided that the lawyer discloses to prospective and existing clients the limits placed on the lawyer’s ability to practice in New York without an office here.

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