

NEW YORK STATE BAR ASSOCIATION  
Professional Ethics Committee Opinions

Opinion #199 9/30/71 (33-71) Topic: Conflicting Interests

Digest: Cannot represent mortgagor and mortgagee without express consent after full disclosure.

Code\*: DR 5-105 (C);  
DR 5-105 (D)

QUESTION

May an attorney or another member or associate of his firm represent the mortgagor and the mortgagee in the same transaction?

OPINION

Unless both the mortgagor and the mortgagee give their express consent after full disclosure, the same partnership may not represent the mortgagor and the mortgagee as it would be representing conflicting interest. DR 5-105 (C); Wise, Legal Ethics 255 (2d ed. 1970). A lawyer may represent multiple clients only if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each. DR 5-105 (C); N. Y. State 162 (1970).

If a lawyer is required to decline employment under DR 5-105, no partner or associate of his or his firm may accept said employment. DR 5-105 (D).

Opinion #200 - 9/30/71 (34-71) Topic: Office Letterheads and Professional Cards.

Modifies #51

Overruled (in part) by 494

Digest: Permissible information on office letterhead or professional card is limited by Disciplinary Rules.

Code\*: EC 2-10;  
DR 2-102 (A) (1), (2), (4) and (5);  
DR 2-102 (E) and (F); DR 2-105  
(A)(1);  
Canon 9.

QUESTION

May a lawyer's law office letterhead or professional card indicate any of the following:

- (a) That he is a member of any bar association (national, state, county, etc.)?
- (b) That he is a member of any lawyers' association (specialty or otherwise)?
- (c) That he is or was a member of any legislature (federal, state or local)?

NEW YORK STATE BAR ASSOCIATION  
Professional Ethics Committee Opinions

- (d) That he is or was formerly a justice of the peace or judge of any court?
- (e) That he is or was formerly counsel in any capacity to any federal, state or municipal body or organization?
- (f) That he specializes in any particular field of law?
- (g) That he is a medical doctor, engineer, C.P.A., accountant, or engaged in any other profession?
- (h) That he maintains a law office and telephone number at more than one address if, in fact, the additional address and telephone number are not in an area where he has a substantial clientele, he is not physically present at the additional address a substantial amount of time, and the listing is a mere accommodation to another attorney with whom he is not actively associated in the practice of law?

OPINION

In the opinion of the Committee, each of the inquiries must be answered in the negative, except as hereinafter stated.

The traditional ban against advertising does not preclude a lawyer from identifying himself and his profession on a dignified office card and letterhead. EC 2-10. However, the statements which may be included thereon are limited by the Disciplinary Rules.

DR 2-102 provides in part as follows:

- "(A) A lawyer or law firm shall not use professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, or similar professional notices or devices, except that the following may be used if they are in dignified form:
  - "(1) A professional card of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, and any information permitted under DR 2-105. A professional card of a law firm may also give the names of members and associates. Such cards may be used for identification but may not be published in periodicals, magazines, newspapers, or other media.  
\* \* \* \* \*
  - "(4) A letterhead of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, associates and any information permitted under DR 2-105. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A law-

**NEW YORK STATE BAR ASSOCIATION**  
**Professional Ethics Committee Opinions**

yer may be designated 'Of Counsel' on a letterhead if he has a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as 'General Counsel' or by similar professional reference on stationery of a client if he or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession."

Biographical and informative matter other than that expressly authorized is regarded as calculated to attract clients in violation of the prohibition against advertising and solicitation. Thus it would not be proper for a lawyer to state on his professional card or letterhead that he is a member of any bar association or other lawyers' association. N.Y. City 410 (1937). Nor should he state thereon that he is or was formerly a member of any legislature (federal, state or local), a justice of the peace or judge of any court, or counsel in any capacity to any federal, state or municipal body or organization. Drinker, Legal Ethics 289 (1953). However, this rule differs from DR 2-102 (A) (2), relating to announcement cards mailed by a lawyer on such occasions as the opening of an office or a new association, in which cases the immediate past position of the lawyer may be stated. ABA 301 (1961); N.Y. State 83 (1968).

The Code provides that a lawyer, other than a patent, trademark or admiralty practitioner, may not hold himself out to the general public as a specialist or as limiting his practice. DR 2-105 (A) (1). Hence, any reference to specialization on a lawyer's letterhead or office card would be improper. Nor may this be done indirectly by stating another field of activity in which the lawyer is qualified.

While it is permissible under certain conditions for a lawyer to engage in both the practice of law and another profession or business, he may not so indicate on his professional stationery. DR 2-102 (E) provides:

"A lawyer who is engaged both in the practice of law and another profession or business shall not so indicate on his letterhead, office sign, or professional card, nor shall he identify himself as a lawyer in any publication in connection with his other profession or business."

Furthermore, the permissible listing by a lawyer of an earned degree or title is limited to degrees indicating his training "in the law." DR 2-102 (F).

NEW YORK STATE BAR ASSOCIATION  
Professional Ethics Committee Opinions

With respect to the inquiry lettered "(h)", a lawyer's identification on his professional stationery must at all times be accurate. EC 2-10. If he maintains law offices in more than one community and is engaged in the practice of the law in each community in a substantial way, he may list the addresses and telephone numbers of his respective offices on his professional stationery. It would not, however, be proper to indicate thereon that he has a law office at a particular location if such is not the fact. DR 2-102 (A) (5) provides in part that a listing of "the office of a lawyer" and his telephone number may be placed in the alphabetical and classified sections of a telephone directory.

"...for the geographical area or areas in which the lawyer resides OR maintains offices OR in which a significant part of his clientele resides and in the city directory of the city in which his or the firm's office is located." (emphasis added)

It will be observed that mere physical presence of a lawyer in a particular area, no matter how long, is not in itself, absent any of the three conditions specified in DR 2-102 (A) (5), sufficient justification for the lawyer's listing in the telephone directory for that area. On the other hand, if a lawyer maintains his law office in one county but a significant part of his clientele resides in another county, his office address and telephone number may be listed in both counties. Additionally, his home telephone may be listed in a third county if that is where he resides. ABA 295 (1959), N. Y. City 367 (1936); N. Y. City 662 (1944).

It has been held that a lawyer whose office is in one community but who has clients in a neighboring community who he would serve in that area may list his name in the telephone directory of the latter community under the address and telephone number, but not the name, of another lawyer who is located there. ABA Inf. 732 (1963).

Variations on the above inquiries are legion. In general, the more customary and conventional a letterhead or professional card is, the safer its use. Wise, Legal Ethics- 147 (2d ed. 1970). As a guideline it should be noted that the Preliminary Statement to the Code of Professional Responsibility provides that:

"The Disciplinary Rules state the MINIMUM level of conduct below which no lawyer can fall without being subject to disciplinary action." (emphasis added).

Any doubts as to the propriety of a professional card or letterhead should be resolved against its use, for a lawyer must avoid even the appearance of impropriety. Canon 9.