NEW YORK STATE BAR ASSOCIATION
NYSBA One Elk Street, Albany, New York 12207 • PH 518.463.3200 • www.nysba.org

Committee on Professional Ethics

Opinion 863 (5/10/11)

Topic: Out-of-state lawyer's practice of immigration law in New York State; disclosing jurisdictional and practice area limitations on letterhead and business cards.

Digest: Whether a lawyer not admitted in New York may practice immigration law in New York is a question of law beyond the Committee's jurisdiction. If a lawyer may practice immigration law in New York, her letterhead and business cards must fairly disclose the jurisdictional and subject matter limitations on her practice.

Rules: 5.5, 7.1(a), 7.3, 7.5(a) & (d), 8.4(b), 8.5

QUESTIONS

1. May a lawyer who is not admitted in New York State, but who is currently working at an immigration law firm within the state, practice law in New York State exclusively in immigration matters?

2. Assuming that the lawyer is permitted to engage in practice in New York State exclusively in immigration matters, must the lawyer's letterhead and business cards disclose jurisdictional and subject matter limitations on her practice?

OPINION

3. The inquirer is licensed in Texas, but not New York. She works at an "immigration law firm" within New York State that "exclusively practice[s] immigration law." She inquires about her right to practice immigration law in New York and about the scope of her duty under Rule 7.5(d) to disclose the jurisdictional limitations on her practice on the firm letterhead, on her business card, and on her email signature block.

Question 1: May an Out-of-State Lawyer Practice Immigration Law in New York?

4. Whether an "out-of-state lawyer" may practice law in New York State is a question of law beyond the scope of the Committee's jurisdiction. N.Y. State 835 (2009). (We use the term "out-of-state lawyer" to mean a person who is not admitted to practice in New York but who is admitted to practice and in good standing in another U.S. jurisdiction.) As we observed in N.Y. State 835, the unauthorized practice of law in New York is governed by Judiciary Law §§ 476-a, 478 and 484. In particular, Judiciary Law § 478 provides that it is unlawful for a person not admitted in New York "to hold himself out to the public as being entitled to practice law … or advertise the title of lawyer."

5. Federal law provides that a member in good standing of the bar of the highest court of any state, who is not under suspension or otherwise restricted in his or her practice of law, may practice before a Federal Immigration Court. *See* 8 C.F.R. §§ 1001.1(f), 1292.1(a)(1). Whether these federal provisions permit a lawyer to engage in a limited practice of law in New York State without being admitted in New York is purely a question of law that is not answered by the New York Rules of Professional Conduct. Therefore, it is beyond our jurisdiction. N.Y. State 835.

6. Assuming the inquirer is permitted to "exclusively practice immigration law" in New York, the issue arises as to whether the New York Rules of Professional Conduct apply to her conduct within New York State. The inquirer assumes that the Rules do apply, but this is also a question of law beyond the scope of the Committee's jurisdiction. Rule 8.5(b)(2), which addresses the rules of disciplinary conduct that will be used to examine the inquirer's conduct, *i.e.,* conduct that is not "in connection with a proceeding in a court," refers only to lawyers admitted in New York State.

7. Although the inquirer is not admitted in New York, the New York Rules more than likely will govern her proposed conduct in New York State. The New York Rules of Professional Conduct specify that the Rules apply to lawyers who are not admitted in New York, but who offer to provide legal services in New York. *See* Rule 7.3(i) (provisions of Rule 7.3 governing solicitation "shall apply to a lawyer or members of a law firm not admitted to practice in this State who shall solicit retention by residents of this State."). Furthermore, Judiciary Law § 90(2) states that the Supreme Court "shall have the power and control over attorneys and counselors-at-law," thus broadly establishing judicial governance over the conduct of attorneys practicing within the State. *See also* N.Y. State 761 (2003), n.4 (noting broad applicability of New York Code under Appellate Division Rules and concluding that "Disciplinary Rules that are specifically applicable to law firms under the New York Code apply to firms with a New York office and at least one New York lawyer affiliated with the firm in that office").

8. New York courts have also noted that they retain the "inherent authority" to discipline attorneys for misconduct independent of any violations of New York's rules of conduct, which focus exclusively on prohibitions applicable to a "lawyer." *See In re Wong*, 275 A.D.2d 1, 710 N.Y.S.2d 57 (1st Dep't 2000) (interpreting similar provisions in

prior Code of Professional Responsibility). In the end, however, whether the inquiring lawyer is subject to the jurisdiction of the New York courts and to the applicable rules governing the attorney's conduct are questions of law beyond the scope of the Committee's jurisdiction.

Question 2: How Must the Inquirer Describe Her Practice Limitations?

9. Assuming that the inquirer may engage in practice exclusively in immigration matters in New York State, must the lawyer's letterhead, business cards, and email signature block disclose jurisdictional and/or subject matter limitations on her practice? That question is addressed by Rules 7.1 and 7.5.

10. Rule 7.1(a)(1) prohibits a lawyer from using or disseminating any advertisement that "contains statements or claims that are false, deceptive or misleading." Rule 7.5(a) provides that a lawyer's professional cards and letterhead (among other things) must be "in accordance with Rule 7.1 …." Rule 7.5(d) provides, in pertinent part, that when a law partnership practices in New York with lawyers licensed in different jurisdictions, "all enumerations of the members and associates of the firm on its letterhead and in other permissible listings [must] make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions."

11. The inquirer asks if she can satisfy those Rules by simply stating "Admitted in Texas" or if she must additionally note: "Practice limited solely to Immigration and Nationality Law."

12. Assuming the New York Rules apply to the inquirer's conduct, we believe that compliance with Rules 7.5(a) and 7.5(d) in these circumstances requires that the lawyer note on the firm letterhead where her name appears, and on her business cards, that (a) she is admitted to practice only in Texas, and (b) her practice in New York is limited solely to immigration matters. *See* New Jersey Supreme Court Committee on Unauthorized Practice of Law, Committee on Attorney Advertising, Opinion 44 (2008) (if an out-of-state attorney is practicing exclusively immigration law in New Jersey, "all communications (including the firm's letterhead, business cards, website, and advertising materials) must specifically state that the attorney is not licensed in New Jersey and that the attorney's practice is limited to immigration matters"); Pennsylvania Ethics Op. 2005-14 (2005) ("Rules 7.1 and 7.5b require that the inquirer note on all her letterhead, office signage, business cards and on/in any other publicity or advertising vehicles, that she is admitted only in the state to which she is licensed, and that her practice in Pennsylvania is strictly limited to Immigration and Naturalization").

13. For a lawyer in these circumstances to simply list that she is "Admitted in Texas" would not sufficiently "make clear the jurisdictional limitations" on the lawyer's practice as required by Rule 7.5(d). *See* ABA Informal Op. 777 (1965) (a legend such as "Admitted to Practice in New York" would be improper because "it would not negative the right (or admission) to practice in the District" of Columbia, where the lawyer was not admitted). The requirement that the inquirer list the state in which she is licensed is

essential to enable a member of the public to ascertain if a lawyer is admitted in good standing. Without this information, it would be unduly burdensome for potential clients and others to ascertain whether the inquirer is in good standing.

14. In addition, we believe that it would be prudent (though not required by the Rules) for the inquirer to add that she is "not licensed in New York State" (or words to that effect). That limitation would avoid any possible confusion regarding whether the inquirer is or is not licensed in New York.

15. A lawyer's jurisdictional and subject matter limitations need not necessarily be included in an email signature block. If, however, the email constitutes an "advertisement" as defined in Rule 1.0(a), then it must comply with Rule 7.1(a). If it is also a "solicitation" under Rule 7.3(b) (defining certain types of advertising as "solicitation"), then it must also comply with Rule 7.3. Even if an email is not an advertisement (and thus also is not a solicitation), the lawyer must not state or imply through any communication that she is admitted to practice in New York. *See* Rule 8.4 (c) (prohibiting a lawyer from engaging in conduct involving "dishonesty, fraud, deceit or misrepresentation").

CONCLUSION

16. Whether a lawyer who is not admitted to practice law in New York State may engage in a practice within New York State exclusively limited to immigration law is purely a question of law that is not answered by the New York Rules of Professional Conduct and is therefore beyond our jurisdiction. Assuming the lawyer is permitted to practice exclusively immigration law in New York State, and assuming that the New York Rules govern the lawyer's conduct, then the lawyer must note on her letterhead and on her business cards that (a) she is admitted to practice only in Texas, and (b) her practice in New York is limited solely to immigration matters. Finally, even though the Rules do not require her to do so, the inquirer would be prudent to add that she is "not licensed in New York State" (or words to that effect).

(19-10)