



New York State Bar Association
Committee on Professional Ethics

Opinion 1147 (3/23/2018)

Topic: Advertising: Use of “Esq.” by a lawyer not admitted in New York.

Digest: A lawyer not admitted to practice in New York may use the term “Esq.” in connection with a non-legal business conducted in New York, provided that care is taken to avoid confusion about the lawyer’s status. A lawyer who performs *pro bono* immigration services for a nonprofit organization may be described to clients and others as a lawyer, as long as all communications disclose the lawyer’s jurisdictional and practice limitations.

Rules: 5.5, 7.5(a) 7.5(d), 8.4(b) & (c).

FACTS

1. The inquirer is admitted to practice law in California but not New York, where the inquirer currently resides. The inquirer works for a municipal agency in New York, but the scope of the inquirer’s employment does not involve the practice of law; the municipal agency employs a New York lawyer who acts as the agency’s counsel. The inquirer would like to use the term “Esq.” on business cards relating to the municipal employment.
2. In addition, the inquirer is a volunteer immigration lawyer for a non-profit organization, representing individuals in proceedings before the federal immigration court, an administrative agency. The inquirer has registered with the court and is identified as counsel on the court’s forms when representing clients before the court. The inquirer advises these clients that the inquirer is not admitted to the practice of law in New York but is admitted in California.

QUESTIONS

3. The inquiry poses two questions:
 - a. May a lawyer not admitted in New York use the honorific “Esquire,” more commonly abbreviated as “Esq.,” on business cards that the lawyer uses as a municipal employee performing non-legal services?
 - b. When a lawyer not admitted in New York performs *pro bono* legal services to clients before a federal immigration tribunal, what disclosures of jurisdiction and subject matter limitations must the lawyer provide to clients?

OPINION

4. In N.Y. State 1089 (2016), we addressed whether a “retired lawyer” within the meaning

of Section 118.1(g) of the Rules of the Chief Administrative Judge, 22 NYCRR § 118.1(g), may use the title “Esq.” in performing legal services that Section 118.1(g) allows for someone so designated. There (in ¶ 4), we cited with approval N.Y. City 1994-5, which says:

The title “esquire” does not legally designate an individual as a lawyer because it is not conferred in this country as an academic degree or license. It has, however, been adopted by lawyers by convention as a form of designation. Thus, one using the title in the United States is identifying himself or herself as a lawyer.

5. In the same opinion, we added (in ¶ 5), “that the term ‘Esq.’ does not have precisely the same connotation as, for example, ‘Attorney-at-Law,’” and that, while lawyers acting in a non-legal capacity such as working for a nonprofit organization in administration or public relations could use the honorific “Esq.” without qualification, a lawyer may not lead the recipient of the communication “to conclude that the lawyer was acting in a legal capacity.” *Id.* Thus, when someone who is not admitted to practice law in New York uses the term “Esq.” on a business card or otherwise, the question is whether the use of that abbreviation is misleading under Rule 8.4(c) of the N.Y. Rules of Professional Conduct (the “Rules”), prohibiting lawyers from engaging in “conduct involving dishonesty, fraud, deceit or misrepresentation.”

6. We think the analysis in N.Y. State 1089 controls here. There, we noted that the retired lawyer remains a lawyer (although limited to performing unpaid legal work), and that while use of the term “Esq.” is accurate, public perception must also be considered. A name on a business card containing solely a New York address and the honorific “Esq.” could reasonably lead a member of the public to believe that the cardholder is a lawyer. A name on a business card with the honorific “Esq.” but describing the person’s position as one performing obviously non-legal services conveys a very different message. The issue, then, is not so much the use of “Esq.” – provided the person is a lawyer – but the context in which the title appears. If the business transmits the message that the person is a lawyer but not performing legal services, then we see no reason under the Rules why the inquirer may not say as much. As long as the message is not misleading – as long as the lawyer who chooses to use the title takes care to avoid confusion and assure that the relevant audience is not misled to believe that the lawyer is acting as a lawyer – then we have no quarrel with its use on a business card.

7. The inquirer asks also if it is sufficient to explain to clients whom the inquirer represents as a volunteer immigration lawyer that the inquirer is admitted only in California and not in New York. Although we do not address questions of law, it has been our understanding that federal law permits a member in good standing of the bar of any state not under suspension or otherwise restricted in his or her practice of law may practice before federal immigration tribunals. *See* N.Y. State 863 ¶ 5 (2011).

8. In N.Y. State 863, applying the Rules to determine the disclosure that an attorney not admitted in New York must make, we said that a lawyer must note on letterhead and business cards that the lawyer is admitted to practice only in the state of admission, and that the lawyer’s practice in New York is limited solely to immigration matters. We said, too, that prudence in that situation suggests that the lawyer add that the lawyer is “not licensed in New York State,” in order to “avoid any possible confusion regarding whether the inquirer is or is not licensed in New York.” *See id.* ¶ 14.

9. While the jurisdictional and subject matter limitations need not be included in an email signature block, nothing in an email or any communication may state or imply that the lawyer is admitted to practice in New York, because to do so would violate Rule 8.4(c), prohibiting a lawyer from engaging in misrepresentation. *Id.* ¶ 15.

CONCLUSION

10. A lawyer not admitted in New York may use the term “Esq.” on business cards as long as the card does not suggest that the lawyer is performing or qualified to perform legal services in this State. A lawyer may engage in a voluntary immigration practice with a nonprofit organization, and may refer to him or herself as a lawyer, provided that letterhead and business cards used in the practice fairly disclose applicable jurisdictional and subject matter limitations.

(37-17)