



New York State Bar Association  
Committee on Professional Ethics

Opinion 951 (12/17/12)

**Topic:** Offering letter writing services through website.

**Digest:** A lawyer may not offer a web-based letter writing service on a broad range of topics unless it is clear that no legal services are rendered and the lawyer prominently disclaims the existence of a client-lawyer relationship on the website.

**Rules:** 5.7(a) & (c).

## FACTS

1. The inquiring lawyer contemplates offering an online letter drafting service; the lawyer would charge a flat fee for the preparation of letters in the following categories: Fund-raising, Commercial/Business, Personal, Acceptance, College, Commendation, Condolence, Congratulations, Cover, Demand, E-mail, Introductory, Letters of intent, Marketing, Notification, Promotional, Reference, Rejection, Resignation, Request, Response, Resume, Application, Sales, Sympathy and Thank-you letters. The draft letters would be prepared by a lawyer and delivered to the client by electronic mail for execution and mailing. The lawyer proposes adding a disclaimer to the website that would advise that he is not dispensing legal advice, no legal representation exists, no attorney-client relationship is formed and the attorney is being hired only for his skills as a writer.

## QUESTION

2. May a lawyer offer a letter-writing service which does not dispense legal advice through a website he owns? May the website advertise the fact that the letters are written by an attorney?

## OPINION

3. Rule 5.7, entitled “Responsibilities Regarding Nonlegal Services” defines “nonlegal services” to “mean those services that lawyers may lawfully provide and that are not prohibited as an unauthorized practice of law when provided by a nonlawyer.” Clearly letters on many of the topics raised by the Inquirer are non-legal, such as Condolence, Sympathy and Thank-you letters. However, the context and content of other letters may address legal rights and responsibilities. For example, a demand letter may be necessary to declare a default under a contract, a letter of intent may create legal obligations or a resignation may have to be addressed in a certain manner to be effective. Therefore whether the letter writing services qualify as “nonlegal services” for purposes of the Rule will require an examination of each request for a letter.

4. Our concern here is that the inquirer proposes to identify himself as an attorney, and that the letters, including those that could be written by a non-lawyer, will be written by an attorney.

5. Section (a)(1) of Rule 5.7 states that the Rules of Professional Conduct apply if the lawyer or law firm provides nonlegal services to a person that *are not distinct* from legal services being provided by the lawyer or firm. This test requires an examination of the subject of each letter and its context to determine whether the writing constitutes “nonlegal services” that are “distinct from legal services”

6. Comment [1] to Rule 5.7 places the onus on the lawyer to be clear about the nature of the services and the lawyer's role. It is likely that a client of the letter writing service, knowing that the writer is a lawyer, may expect legal advice.

7. In N.Y. State 832 (2009) we addressed an inquiry involving the sale of shelf corporations (a non-legal service); in paragraph 10 we stated that “[e]ven if the attorney merely identifies himself as a lawyer when selling shelf corporations but does not promise or provide legal services, the risk of confusion is great and purchasers could reasonably believe that they had an attorney-client relationship with the seller.” In N.Y. State 557 (1984) we noted that “[w]hile there are many services that may properly be undertaken by lawyers and non-lawyers alike, especially in the fields of taxation and tax planning, when such services are performed by a lawyer who holds himself out as a lawyer, they constitute the practice of law and the lawyer, in performing them is governed by the Code.”

8. Rule 5.7 (a)(2) and (a)(3) provide that the Rules apply even if the nonlegal services are distinct if the person receiving the services could reasonably believe that the services are the subject of a client lawyer relationship.

9. Rule 5.7 (a)(4) states that for these purposes “it will be presumed that the person receiving nonlegal services believes the services to be the subject of a client-lawyer relationship unless the lawyer or law firm has advised the person receiving the services in writing that the services are not legal services and that the protection of a client-lawyer relationship does not exist with respect to the nonlawyer services. . . .”

10. Here, the inquirer proposes to advise users of the service that no legal advice is being dispensed, that the lawyer is not acting in a representative capacity, that no attorney-client relationship is formed and that the attorney is being hired only for his skill as a writer. Thus, the presumptions under (a)(2) and (3) may be rebutted effectively if the services are clearly non-legal services.

11. However, this analysis does not address the delivery of services which are arguably legal in nature, such as the acceptance letter, the letter of intent, a demand or resignation. Where those examples could raise questions of the legal effect of the document, N.Y. State 832 would control this analysis. As stated in that Opinion : “even if the lawyer provides the disclaimer specified in Rule 5.7(a)(4), it would not be effective if the lawyer actually provided legal advice or other legal services to the customer of the nonlegal business.”

12. We believe that a lawyer may offer the services proposed in this inquiry but by identifying him or her as a lawyer, the inquirer creates a substantial risk of confusion in the mind of the client about the legal effect of many of these letters. This likelihood is great enough that the safe harbor provided by (a)(4) would not be effective. Whether the writing of each letter is a legal or non-legal service will require a close look at the circumstances of each letter.

## **CONCLUSION**

13. A lawyer may not provide letter-writing services unless it is clear that the subject matter of the letters do not implicate legal rights, no legal services are rendered and the lawyer prominently disclaims the existence of a client-lawyer relationship on the website.

(51-12)