



New York State Bar Association
Committee on Professional Ethics

Opinion 964 (4/4/13)

Topic: Virtual law office; office address; advertising, business cards and letterhead

Digest: Advertising for legal services may not identify a mail drop as the sole address, and must include the street address of the lawyer’s principal office; a lawyer’s business cards and letterhead may use a mail drop as the sole address, provided they are not being used as advertising and use of the address is not misleading.

Rules: 1.0(a); 7.1(h); 7.5(a); 8.4(c)

FACTS

1. Inquirer conducts a general practice, with an emphasis on immigration law, primarily on-line or by other electronic means of communication. Inquirer meets with clients and others only by appointment, usually by telephone or Skype or at the client’s or other person’s location and only rarely at her home, where her files, communications tools and desk are located. Inquirer does not wish to receive mail or drop-in clients or third parties at her home. She plans to use a commercial mailbox service address as her mail address and would prefer not to identify her home address in any advertising she may undertake or on her business cards and letterhead, using instead only her mailbox address.

QUESTIONS

2. May a lawyer use a commercial mailbox service address as the only office address listed in advertisements, omitting the address of her physical office?

3. May a lawyer use a commercial mailbox service address as the only office address listed on business cards and letterhead, omitting the address of her physical office?

OPINION

A. May lawyer advertising include a mailbox service address instead of an office address?

4. Rule 7.1(h) provides, in pertinent part, that “[a]ll advertisements shall include ... the principal law office address ... of the lawyer or law firm whose services are being offered.” This seems unambiguously to require a physical office address. Moreover, this understanding of the requirement is consistent with prior interpretation and the history of the Rule.

5. In 2002, when the Code of Professional Responsibility was in force, this Committee construed the term “office address” in DR 2-101(k), the precursor of Rule 7.1(h), to mean a physical street address at which the principal office of the lawyer or firm is located. The Committee noted that this was the accepted meaning of the term prior to advent of the Internet, and reasoned that the requirement of an office address continued to serve several useful purposes that would not be similarly served by electronic addresses.¹ The Committee concluded that advertising for legal services “may not list a website or email address as the sole address, but must also include the street address of the lawyer’s office.” N.Y. State 756 (2002).

6. In the advertising rules adopted by the Appellate Divisions in 2007, DR 2-101(k) was carried forward as DR 2-101(h) with the modification of “office address” to read “principal law office address,” as the corresponding Rule 7.1(h) reads today. We think this 2007 modification served to underscore the intent of the Appellate Divisions that all lawyer advertisements were to disclose the address of an office where the lawyers were present and available for contact, and where personal service or delivery of legal papers could be effected.

7. That the same language was carried forward in *haec verba* in the Rules of Professional Conduct adopted by the Appellate Divisions in 2008, effective April 1, 2009, despite the fact that the requirement was not in the rules proposed by the New York State Bar Association, reinforces our view that the Appellate Divisions intended no change in the prior mandate, and that the current Rule 7.1(h) still requires that advertising include the street address of a principal law office.

B. May business cards and letterheads include a mailbox service address instead of an office address?

8. Lawyers are explicitly *permitted* to use business card and letterheads giving “addresses,” which of course includes the traditional kind of office street address. Rule 7.5(a)(1) (business cards); Rule 7.5(a)(4) (letterhead). The inquiry poses the question whether lawyers are *required* to include such office addresses on any cards and letterheads that they may use.

9. Rule 7.5 provides that a lawyer or law firm may use “professional cards” (*i.e.*, business cards) and letterheads “provided the same do not violate any statute or court rule and are in accordance with Rule 7.1” on advertising. As noted above, Rule 7.1(h) requires that advertisements include the physical address of the lawyer’s principal office. We see no exception from the mandate of Rule 7.1(h) for advertisements that are in the form of business cards or letterhead. If a business card or letterhead were to constitute an advertisement, it would be required to include the lawyer’s principal office address.

10. “Advertisement” is defined as “any public or private communication made by or on behalf of a lawyer or law firm about that lawyer or law firm’s services, the primary purpose of

¹ These purposes included facilitation of “a prospective client’s ability to make an intelligent selection of a lawyer”; of contact by the lawyer’s “clients, adversaries and other interested parties”; of a client’s ability to find and meet with the lawyer “at a known physical location”; and of “the personal service or delivery of legal papers and other correspondence where that mode of delivery is elected.” N.Y. State 756 (2002).

which is for the retention of the lawyer or law firm,” though not including “communications to existing clients or other lawyers.” Rule 1.0(a). “Not all communications made by lawyers about the lawyer or the law firm’s services are advertising.” Rule 7.1, Cmt. [6].

11. When a business or professional card or letterhead is used in the ordinary course of professional practice or social intercourse without primary intent to secure retention – *e.g.*, simply to identify the lawyer – it does not constitute advertising.²

12. In that circumstance, Rule 7.1(h) imposes no burden on the lawyer to include her principal law office address or, for that matter, any address. *See* N.Y. State 936 (2012). Nor would Rule 7.5 impose any such requirement, because as noted above, its provisions are entirely permissive as to the use of professional cards and letterhead that give addresses; in contrast to Rule 7.1(h), they do not require the inclusion of a lawyer’s or law firm’s principal law office address or any address.

13. Of course it is also possible that a lawyer could design or use cards or letterhead in atypical ways. If such cards or letterhead were given or sent to someone other than an existing client or another lawyer, and primarily in furtherance of an effort to secure retention of the lawyer or law firm, then the card or letterhead would constitute advertising.³ In that case, Rule 7.1(h) would require it to include a principal law office street address.⁴

14. To say that the more customary uses of cards and letterhead do not constitute advertising does not end the inquiry, because there are ethical constraints other than those that apply to advertising. A lawyer may not use a mailbox service address (or any other content of a card or letterhead) to mislead.⁵ For example, a mailing address that is in a community other than the one in which the lawyer’s physical office is located, or that appears to be a physical address when it

² *See* N.Y. State 936 (2012) (applying Rule 7.1 to letterhead only when the letterhead is used in a communication that constitutes an advertisement); *cf.* Rule 7.1, Cmt. [8] (communications for marketing or branding are not necessarily advertisements, and items like legal pads or coffee mugs printed with firm contact information are not advertisements within rule “if their primary purpose is general awareness and branding, rather than the retention of the law firm for a particular matter”); N.Y. State 937 (2012) (communications intended to raise general brand awareness are not advertising even if there is an underlying motivation to increase a lawyer’s business).

³ *Cf.* N.Y. State 937 (2012) (cautioning that if promotional items “were marked with more than the firm logo – if for example they included slogans or more information about the firm” – then they could constitute advertising subject to Rule 7.1).

⁴ Alternatively, the letterhead might not itself constitute advertising but could appear on a letter with advertising in its text. In that case as well, the advertisement (though not necessarily the letterhead) would be required to include the lawyer’s office address.

⁵ While Rule 7.1(a)’s proscription of misleading statements in advertising may not apply to traditional business and professional cards that are not advertisements, “there are also other more general rules governing use of misleading statements.” N.Y. State 936, *supra* (citing Rules 4.1 and 8.4(c)).

is in fact only a mail drop, could be misleading if not adequately explained.⁶ If use of a business card or letterhead were to constitute “conduct involving dishonesty, fraud, deceit or misrepresentation,” it would be prohibited under Rule 8.4(c).

CONCLUSION

15. Advertising for legal services may not identify a mail drop as the sole address, but must also include the street address of the lawyer’s principal office.

16. A lawyer’s business or professional cards and letterhead may use a mail drop as the sole address, provided they are not being used as advertising and use of the mail address is not misleading.

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⁶ See N.Y. State 881 (2011) (opining that listing spouse’s law firm address on letterhead, without appropriate arrangements or disclaimers, would be misleading); N.Y. State 546 (1982) (opining that letterhead may list a branch office open only several days per month, if accompanied by appropriate disclaimer indicating limited hours, but noting that it would be deceptive and misleading “to list a ‘mail drop’ as a branch office ... without some appropriate explanation”).