



**New York State Bar Association
Committee on Professional Ethics**

Opinion 1025 (9/29/14)

Modifies N.Y. State 756 and 964

Topic: Virtual law office; Advertising principal law office address

Digest: An attorney may operate via a purely virtual office, provided the attorney complies with all applicable laws and Rules. An attorney who is admitted to practice in New York but who is not resident in New York and who advertises his or her law practice in New York must include the address of the attorney's principal office, which may be the Internet address of a virtual law office. The attorney must have an office that meets the minimum requirements of Judiciary Law §470, but we express no opinion as to what Judiciary Law §470 requires.

Rules: 7.1(h)

FACTS

1. The inquirer seeks to operate a “virtual law office,” meaning solely an online presence. The inquirer does not reside in New York (in fact, lives outside the U.S.) and does not have in New York a brick-and-mortar office of any kind for the purpose of client meetings or otherwise conducting the practice of law (hereafter referred to as a “physical office”), but is licensed to practice in New York. The inquirer is a solo practitioner and engages only in transactional practice, such as preparing contracts relating to employment law, business law, and charity law. The inquirer does not accept litigation clients and would make this clear in any advertising.

2. The inquirer would advertise through a website and other forms of electronic communications.

3. The inquirer would interact with clients online and by other electronic means. The inquirer would contract with a service (the "Service") that would (i) provide a website and electronic means of communication, (ii) provide someone based in New York to answer calls to the inquirer's New York phone number, (iii) forward mail and other delivered materials to the inquirer, and (iv) accept service of process on behalf of the inquirer. Alternatively, the inquirer would rely upon a relative who resides in New York to receive calls, forward deliveries and mail, and accept service of process.

4. The inquirer's law office, which could be described as an "online" or "virtual" law office, would allow the client and attorney to communicate rapidly and securely, without regard for their physical location or the time of day. Once a client is registered, the client would have access to a private portal for obtaining legal services, checking on the status of matters, storing

relevant documents, and communicating with the attorney. A prospective client would be informed that the attorney will operate only virtually, and that the client would receive an email instructing the client how to download the relevant software and obtain a user name and password. Then, the attorney would send the prospective client an engagement letter, an intake form, and invoices. Client communications would be secured using a level of security comparable to what banks and government agencies use. (The Service uses “secure HTTP” protocols.) Only the client would have authorized access to the client’s information. Documents would be backed up on secure servers that keep redundant copies in multiple locations to reduce the risks of data loss.

QUESTION

5. Rule 7.1(h) of the Rule of Professional Conduct, governing advertising, requires that advertisements contain the attorney's principal law office address. Does that Rule prohibit the inquirer from operating via a purely virtual law office?

OPINION

6. Rule 7.1(h) of the New York Rules of Professional Conduct (the "Rules") requires attorney advertising to include the attorney’s “principal law office address.” Rule 7.1(h) states what an attorney’s advertising must contain, but does not expressly state that all attorneys “shall” or “must” maintain a physical office, or set standards to determine what constitutes such an office.

7. In N.Y. State 964 (2013), we interpreted Rule 7.1(h) to mean that “[a]dvertising 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.”¹ The inquirer in that opinion was a New York attorney whose principal office was the attorney's home and who did not wish to receive mail or drop-in clients at home. We concluded that a mail drop was not a principal office within the meaning of Rule 7.1(h), and cited N.Y. State 756 (2002) for the proposition that an advertised office address must be a physical street address at which the office of the attorney or law firm is located.

8. In N.Y. State 756, we interpreted the phrase “office address” in DR 2-101(k), the predecessor of Rule 7.1(h), to require a *physical* address. The opinion cited three reasons for that interpretation. First, “this was the accepted meaning of the term prior to advent of the Internet.” Second, the absence of a street address could be misleading by suggesting a physical proximity to the recipient of the advertisement that does not in fact exist (and by suggesting the ability to provide services in jurisdictions in which the advertising lawyer is not qualified to practice). Third, we wanted to ensure that attorneys practicing in New York are amenable to contact by

¹ We also concluded that “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.”

their clients, adversaries and other interested parties, and to ensure a client's ability to find and meet with the lawyer "at a known physical location."²

9. In N.Y. State 964 (2013) we noted that the advertising rules adopted by the Appellate Divisions in 2007 modified the term "office address" in DR 2-101(K) to read "principal law office address," and we inferred (citing a law dictionary) that this was meant "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." We noted that the phrase "principal law office address" in the 2007 version of the former Disciplinary Rule was "carried forward *in haec verba* in the Rules of Professional Conduct . . . effective April 1, 2009," despite the fact that the requirement was not in the rules proposed by the New York State Bar Association. From this we concluded that "the intent of the Appellate Divisions [was] 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." We also concluded that there is "no exception from the mandate of Rule 7.1(h) for advertisements that are in the form of business cards or letterhead."

10. Our Opinions therefore construe Rule 7.1(h) to require all attorneys who advertise to have and disclose a physical office address.

11. In N.Y. State 756, we noted that the requirement of a street address served the same purpose as Judiciary Law §470³ -- to ensure that attorneys practicing in New York are amenable to contact by their clients, adversaries and other interested parties. Although our interpretation related in part to Judiciary Law §470, it implied that Rule 7.1(h) by itself provided an independent basis for requiring a physical office. Interpreting Rule 7.1(h) and DR 2-101(K) in light of requirements of Judiciary Law §470 is appropriate. We have now concluded, however, that it is incorrect to interpret the attorney-advertising rule as an independent mandate for attorneys who advertise to maintain a physical office address.

12. Before our opinions, Judiciary Law §470 was held to be unconstitutional when applied only to non-New York residents residing in adjoining states, and thus was construed instead to require all lawyers who do not reside in New York but are licensed to practice here and who wish to practice law in New York to have a local office. *See Lichtenstein v. Emerson*, 171 Misc. 2d 933, 656 N.Y.S.2d 180 (Sup. Ct. 1997), *aff'd* 251 A.D.2d 64, 674 N.Y.S.2d 298 (1st Dep't 1998); *White River Paper Co. v. Ashmont Tissue, Inc.*, 110 Misc. 2d 373, 441 N.Y.S.2d 960 (Sup. Ct. 1981). The requirements of Judiciary Law §470 for such an office for non-residents has been interpreted by various courts in ways that may differ from, or impose lesser obligations

² N.Y. 756 did not state that these interests are only important when lawyers advertise, and it would be difficult to conclude they are.

³ Judiciary Law §470 states: "Attorneys having offices in this state may reside in adjoining state. A person, regularly admitted to practice . . . in the courts of record of this state, whose office for the transaction of law business is within the state, may practice as such attorney or counsellor, although he resides in an adjoining state."

than, our past interpretation of DR 2-101(k) and Rule 7.1(h). For example, one court found that the non-resident office requirement was satisfied by having an office at a family member's residence or a New York hotel. *See Rosenstein v. Ernstoff*, 176 A.D. 2d 686 (App. Div. 1991). Another found it met by maintaining a desk at a realty company's Manhattan office and having access to a secretary at that location even though the secretary was not on the attorney's payroll. *See Matter of Scarsella*, 195 A.D. 2d 513 (App. Div. 1993). These holdings verge on approving the kind of "mail drop" we found inadequate in N.Y. State 964. In order to align this Committee's interpretation of Rule 7.1(h) with rulings by courts applying Judiciary Law §470, we have reconsidered whether Rule 7.1(h) independently requires a physical office.

13. Recently, the physical office requirement has come under judicial scrutiny. In *Schoenefeld v. New York*, after a District Court found unconstitutional the interpretation of Judiciary Law §470 to require a physical office, the Second Circuit referred the following certified question to the New York Court of Appeals:⁴

Under New York Judiciary Law §470, which mandates that a nonresident attorney maintain an "office for the transaction of law business" with the state of New York, what are the minimum requirements necessary to satisfy that mandate?

14. In addition, the physical office requirement is undergoing changes in other states.⁵

15. In light of these developments, we no longer believe that Rule 7.1(h) -- a rule that on its face regulates only advertising -- provides an independent basis for requiring a physical office.

16. The New York City Bar recently issued an opinion -- N.Y. City 2014-2 -- in response to a somewhat different inquiry concerning a virtual law office arrangement, and opined that "a New

⁴ *Schoenefeld v. New York*, 748 F.3d 464 (2d Cir. 2014). The Second Circuit did not cite to either N.Y. State 756 or 964, and only cited Rule 1.15 of the Rules of Professional Conduct in passing, in a footnote stating that it "requires an attorney to maintain complete and accurate books and records, but nothing in that Rule requires an attorney to maintain an "office."

⁵ In *In re Application of Carlton*, 708 F. Supp. 2d 524, 526 (D. Md. 2010), the District Court overruled the denial of an attorney's license renewal, holding that the "principal law office" rule had evolved with advances in technology allowing attorneys the flexibility to carry out their work at different locations. The court, however, interpreted the rule to continue to require some physical presence "sufficient to assure accountability of the attorney to clients and to the court." Last year, New Jersey significantly altered its "bona fide office" requirement. The New Jersey Supreme Court amended Supreme Court Rule 1:21-1(a) to provide that "an attorney need not maintain a fixed physical location for the practice of law, but must structure his or her practice in such a manner as to assure, as set forth in Rules of Professional Conduct 1.4 (New Jersey's equivalent of our Rule 1.4), prompt and reliable communication with and accessibility by clients, other counsel, and judicial and administrative tribunals before which the attorney may practice, provided that an attorney must designate one or more physical locations where client files and the attorney's business and financial records may be inspected on short notice by duly authorized regulatory authorities, where mail or hand-deliveries may be made and promptly received, and where process may be served on the attorney for all actions, including disciplinary actions, that may arise out of the practice of law and activities related thereto."

York lawyer may use the street address of a virtual law office located in New York state as the ‘principal law office address’ for the purposes of rule 7.1(h) of the New York Rules of Professional Conduct, even if most of the lawyer’s work is done at another location.” N.Y. City 2014-2 also concluded that such an address may be used on business cards, letterhead and law firm websites. There, as here, the lawyer did not intend to maintain a separate office, but there the lawyer had access to an office run by the virtual law office service provider contracted by the lawyer (which distinguishes it from the facts in Opinion 964)⁶ whereas here the lawyer will not use any office in New York (although the lawyer will appoint an agent for purposes of personal delivery and acceptance of service of process). N.Y. City 2014-2 referred to our Opinions 756 and 964 as well as *Schoenefeld*, but it did not consider, as we do here, whether having no physical office in New York runs afoul of the Rules of Professional Conduct. Instead, it opined that the virtual law office service there provided a level of physical office presence in New York that would satisfy our Opinions 756 and 964.

17. For several reasons, we agree with the reasoning of N.Y. City 2014-2 that a virtual law office can, at least in some cases, adequately advance the policy interests we identified in Opinion 756 (see ¶ 8 above). First, a prospective client’s intelligent selection of a lawyer can be facilitated not merely by physical presence but also by the potential value (due to lower overhead) of having a lawyer who works solely through a virtual law office (where that can be done competently, as we address below). Second, some clients who work only virtually might also prefer, for some kinds of work, the lawyer who operates virtually as well. Third, the robustness of electronic communications, and the appointment of a virtual law office service as an agent for accepting service of process, effectively combine to eliminate any concern that a physical office is necessary in all cases for the receipt of service and other communications. Indeed, as N.Y. City 2014-2 points out, the more electronically-connected lawyer may be “at least as accessible as a lawyer who rents a dedicated physical office space.” We note that physical offices almost always are open only on a limited schedule. Finally, there is nothing inherently misleading about advertising a virtual law office. All such advertising must be truthful and not misleading, and the inquirer here intends to disclose that all services are conducted virtually and not via a physical office.

18. Pennsylvania Opinion 2010-200 concluded that an attorney is permitted to operate from a virtual law office, *i.e.*, one “without a traditional physical counterpart,” and specifically concluded that an attorney practicing in a virtual office is not required to list a physical address in advertisements and on letterheads. The Pennsylvania Committee also concluded that an attorney may use a post office address in advertisements and letterheads, but may not state that services are performed at the address where the post office box is located and that a virtual law

⁶ New York City Bar offers its members a virtual law firm service that it describes as “so much more than just a ‘mail drop’ or a street address,” including its meeting rooms, library, and phone answering service. See <http://www.nycbar.org/small-law-firm-center/virtual-law-firm-program>.

office must disclose information specifying where the services advertised will be performed, but need not disclose the specific address where each attorney is located.⁷

19. North Carolina Opinion 10 (2005) opined that North Carolina rules do not prohibit “use of the Internet as an exclusive means of promoting and delivering legal services.” However, the Opinion reminded lawyers that advertising must include “a physical office address on its website pursuant to Rule 7.2(c)” and pointed out some key concerns for cyberlawyers who use the Internet as the foundation of their law practice. These included (1) engaging in unauthorized practice in other jurisdictions, (2) violating advertising rules in other jurisdictions, (3) providing competent representation given the limited client contact, (4) creating a client-lawyer relationship with a person the lawyer does not intend to represent, and (5) protecting client confidences.

20. This opinion does not pass upon every potential form of virtual law practice. Our inquirer, for example, will not be engaging in litigation, which may present additional issues. Other fact-sensitive matters affect virtual law practice, such as how the matters are staffed, and how effectively the document storage and communications technologies function, and such matters are beyond the scope of this opinion. No matter how this inquirer proceeds, the Rules impose various duties that we emphasize here:

- All attorneys owe their clients a duty of competence (Rule 1.1) and this not only includes competence in performing the legal work but also competence in handling communications and storing and providing access to client files. An attorney should only use technology that he or she is competent to use.
- Attorneys owe duties of effective communication with clients to keep them promptly and reasonably informed and consulted about the means of achieving the client's objectives (Rule 1.4).
- Attorneys owe duties to maintain confidentiality (Rule 1.6), and there are unique concerns about confidentiality that relate to conducting all communications and client file storage electronically.
- Attorneys have numerous duties relating to the proper preservation of client materials (Rules 1.6(c) and 1.15).
- Attorneys must assure adequate supervision of subordinate lawyers and of non-lawyers (Rule 5.1 and 5.3).

⁷ The Pennsylvania Committee also addressed whether an attorney must maintain a physical office, concluding, among other things, that “an attorney may maintain a virtual law office in Pennsylvania;” “an attorney may maintain a virtual law office in which the attorney works from home, and associates work from their homes in various locations, including locations outside of Pennsylvania;” and “an attorney with a virtual office is not required to meet with clients at the address listed in any advertisements and/or in the geographic location where the attorney will perform the services advertised, but must disclose to the client all of the information required under the Rules of Professional Conduct.”

There is no “virtual law office exception” to any of the Rules.

21. A lawyer is, of course, required to comply with applicable law. *See* Rule 8.4(b) (A lawyer must not engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer.) We believe that violation of the requirements of the Judiciary Law applicable to the practice of law may adversely reflect on the lawyer's honesty, trustworthiness or fitness.

CONCLUSION

22. In whatever manner the courts resolve the statutory issues regarding virtual law offices – and we express no opinion on how they will or should resolve those issues – neither Rule 7.1(h) nor any other advertising rule imposes or defines the contours of an attorney's office or style of practice. To the extent N.Y. State 756 and 964 opine that Rule 7.1(h) or its predecessor imposes an obligation for a physical office, they are modified. We now conclude that an attorney who is admitted to practice in New York but who is not resident in New York and who advertises his or her law practice in New York must include the address of the attorney's principal office, which may be the Internet address of a virtual law office. The attorney must have an office that meets the minimum requirements of Judiciary Law §470, but we express no opinion as to what Judiciary Law §470 requires.

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