



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

Opinion 1101 (7/12/2016)

Topic: Advertising; dual practice; link from law firm's website to real estate brokerage information

Digest: A lawyer may place a link on the lawyer's website to a page describing the lawyer's separate status as a real estate broker, as long as the content of the lawyer's website and of the page reached by the link comply with the advertising rules. The lawyer also should be mindful of Rule 5.7, which addresses lawyer involvement in ancillary nonlegal businesses.

Rules: 1.0(a) & (c), 5.7(a), 7.1(a) & (f)

FACTS

1. The inquirer is both a lawyer and real estate broker, pursuing the latter as a part-time associate broker through a separate real estate brokerage firm. The inquirer wishes to create a link on the inquirer's law firm website to a real estate profile page that would display (i) the inquirer's real estate background, (ii) real estate listings, and (iii) contact information for the real estate agency.

QUESTION

2. May a lawyer who is also a real estate broker create a link on the lawyer's website to a real estate profile page that would display (i) the inquirer's real estate background, (ii) real estate listings, and (iii) contact information for the real estate office?

OPINION

3. Our opinions since the late 1970s have permitted a lawyer to advertise a law practice and a business as a real estate broker together. *See, e.g.*, N.Y. State 933 (2012) (lawyer may conduct law practice and real estate brokerage in same office and advertise them together if the ads are not false or misleading); N.Y. State 493 (1978) (lawyer may conduct law practice and real estate brokerage from same office, but may not solicit employment as a lawyer in violation of any statute or court rule and may not act as lawyer and broker in the same transaction). This contrasts with our opinions before the Supreme Court's lawyer advertising opinion in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977). *See, e.g.*, N.Y. State 206 (1971) (lawyer may not publicize a law practice together with a non-legal occupation, since such publicity might involve improper solicitation or the use of the non-legal business as a "feeder" to the law practice).

4. N.Y. State 933 concerned only mailing advertising material (such as greeting cards, business cards, refrigerator magnets and the like) to both law firm and brokerage clients, but nothing in the New York Rules of Professional Conduct (the "Rules") prohibits the link proposed

here, as long as it complies with the advertising rules. *See* N.Y. State 915 (2012) (if relevant advertising rules are adhered to, a law firm’s website may link to the website of a related nonlegal entity); N.Y. State 888 (2011) (lawyer website may include links to other businesses if neither the link nor the linked material involves misrepresentation or causes confusion).

5. In N.Y. State 915, we noted that the definitions of “advertisement” and “computer-accessed communication” in Rule 1.0(a) and (c) were broad enough that, if the primary purpose of a particular link were to facilitate the retention of the services of the lawyer or law firm, the link and the related text would be “advertisements” under the Rules and therefore must comply with Rule 7.1, governing advertisements. Thus, for example, the linked website must not contain “false, deceptive, or misleading” statements, *see* Rule 7.1(a)(1), and the notation “Attorney Advertising” must appear on the home page of the website, *see* Rule 7.1(f).

6. In addition, our prior opinions have pointed out a number of restrictions that apply when a lawyer provides both legal and nonlegal services to a client. While it seems unlikely that the inquirer could provide both legal and nonlegal services to the same client, it is useful to repeat some of those restrictions here.

7. First, the lawyer’s personal interest in receiving a brokerage commission has led us to point out that a lawyer-broker may not in most instances act as both a lawyer and a real estate broker in the same transaction. *See* N.Y. State 1043 (2015) (lawyer who represented client in selling real estate may not accept a referral fee from the real estate broker even if the lawyer does not charge a legal fee); N.Y. State 1015 (2014) (lawyer may serve as both a lawyer and real estate broker only if the brokerage services are compensated by a flat fee paid in advance rather than in a commission-based payment contingent upon closing); N.Y. State 933 (lawyer may not act as a lawyer and broker in the same transaction); N.Y. State 919 (lawyer may not act as attorney for any party to a real estate transaction in which the lawyer is acting as a broker); N.Y. State 493 (1978) (lawyer may not act as a lawyer and a real estate broker in the same transaction). The personal interest conflict of a lawyer acting in receiving the brokerage commission is ordinarily not a consentable conflict. *See* N.Y. State 933 at ¶ 7.

8. Second, Rule 5.7 applies to lawyers or law firms providing nonlegal services to clients or other persons, such as the inquirer here. In particular, Rule 5.7(a) provides that the nonlegal services are subject to the Rules of Professional Conduct where (1) the nonlegal services provided to a person are not distinct from legal services being provided to that person by the lawyer or law firm, (2) the nonlegal services are distinct from the legal services being provided by the lawyer but the person receiving the services could reasonably believe that the nonlegal services are the subject of a client-lawyer relationship, or (3) the lawyer is an owner or agent of, or otherwise affiliated with, the provider of nonlegal services, and the persons receiving the services could reasonably believe that the nonlegal services are the subject of a client-lawyer relationship.

9. Under Rule 5.7(a)(4), for purposes of paragraphs (a)(2) and (a)(3) of Rule 5.7:

[I]t 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 nonlegal services, or if the interest of the lawyer or law firm in the entity providing nonlegal services is *de minimis*.

10. The inquirer is unlikely to provide both legal and nonlegal services to the same client (because, as noted, a lawyer may not serve as lawyer and real estate broker in the same transaction). However, if the inquirer plans to link the legal and brokerage web pages, the inquirer may wish to avoid confusion about whether the brokerage services are subject to a client-attorney relationship by providing, on the linked pages describing the nonlegal services, the warning quoted above from Rule 5.7(a)(4). Opinion 933 ¶ 8, which draws upon Rule 5.7, explains the problem:

If the brokerage services provided to a ... brokerage client are not distinct from legal services provided to that same client, albeit in different matters, or could be perceived by that client to be the subject of a client-lawyer relationship, those [brokerage] services will be subject to the Rules of Professional Conduct. Moreover, ‘it will be presumed that the person receiving [the brokerage] services believes’ them 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 nonlegal services....’”

CONCLUSION

11. If the content of the lawyer’s website and of the page reached by a link therein comply with the advertising rules, a lawyer may place a link on a law firm website to a page describing the lawyer’s separate status as a real estate broker. The lawyer, however, should also be mindful of the restrictions of Rule 5.7(a) on ancillary businesses.

(18-16)