



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

**Opinion 1241 (05/31/2022)**

**Topic:** New York attorney with out-of-state office; attorney advertising and letterhead

**Digest:** A lawyer who is admitted to practice in both New York and Florida, but whose only physical office is in Florida, may state on the letterhead of his Florida office that he is “admitted to the New York Bar,” provided that this statement does not violate the applicable Rules of Professional Conduct.

**Rules:** 1.0(a), 7.1(a), 7.5(a), 8.4(c) & 8.5(b)

**FACTS:**

1. The inquirer is an attorney admitted in both New York and Florida. He is closing his New York office and moving to Florida, where he plans to open an office to provide legal services to clients in Florida and New York. All New York legal services will be provided remotely from the inquirer’s physical location in Florida. Among other things, the inquirer’s legal services will include legal advice on New York and Florida law with respect to litigation pending or contemplated in New York and Florida courts, and the inquirer will negotiate on behalf of clients regarding such litigation, but he will not file an appearance in any New York court. He intends to state on the letterhead of his Florida office that he is “Admitted to the New York Bar.”

**QUESTION:**

2. If a lawyer is admitted in New York and Florida but maintains a physical office only in Florida, may the lawyer state on the letterhead of his Florida office that he is admitted to the Bar of New York State?

**OPINION:**

**A. Which jurisdiction’s Rules of Professional Conduct apply to the inquirer’s letterhead?**

The first step in analyzing a multijurisdictional question is to determine which jurisdiction’s Rules of Professional Conduct (“Rules”) will govern the inquirer’s conduct. In New York, the answer is found in Rule 8.5(b), which provides as follows (emphasis added):

(b) In any exercise of the disciplinary authority of this state, the rules of professional conduct to be applied shall be as follows:

(1) *For conduct in connection with a proceeding in a court* before which a lawyer has been admitted to practice (either generally or for purposes of that

proceeding), the rules to be applied shall be the rules of the jurisdiction in which the court sits, unless the rules of the court provide otherwise; and

(2) *For any other conduct:*

- (i) If the lawyer is licensed to practice only in this state, the rules to be applied shall be the rules of this state, and
- (ii) *If the lawyer is licensed to practice in this state and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.*

3. Thus, New York Rule 8.5(b) divides a lawyer's conduct into two categories: (1) conduct related to a proceeding in a court where the lawyer has been admitted generally or pro hac vice, and (2) all other conduct.

*Rule 8.5(b)(1): Conduct in connection with proceedings before New York courts*

4. The inquirer will advise clients in pending litigation in New York and Florida courts. New York Rule 8.5(b)(1) addresses all conduct "in connection with" those proceedings. If the inquirer sends a letter to a court or to opposing counsel regarding pending litigation, his use of the letterhead would be "in connection with" litigation before a New York or Florida court. His use of the letterhead will thus fall under Rule 8.5(b)(1), and the applicable ethics rules will be the rules of the jurisdiction in which the court sits.

*Rule 8.5(b)(2): All other conduct*

5. If the inquirer uses his letterhead for purposes not in connection with a pending proceeding before a New York court – for example, if he were to advise a New York client about a threatened litigation or non-litigation matter – then his letterhead and its use would fall under the purview of Rule 8.5(b)(2), which governs "all other conduct." Rule 8.5(b)(2) divides lawyers into two categories: (i) lawyers licensed to practice only in New York, and (ii) lawyers licensed in New York and another state. Because the inquirer is presently licensed in both New York and Florida, his conduct would fall under Rule 8.5(b)(2)(ii).

6. Rule 8.5(b)(2)(ii) requires a two-stage inquiry for lawyers licensed in more than one jurisdiction. First, we ask where the lawyer "principally practices"? The inquirer is closing his New York office and moving to Florida, so it appears at first blush that he "principally practices" in Florida. But determining where a lawyer principally practices is not based solely on physical location. Rather, it requires a multi-factor analysis. *See* N.Y. State 1027 ¶ 14 (2014) ("when a lawyer is licensed in more than one jurisdiction, various factors are relevant to determining the one in which the lawyer principally practices"). Two important factors are (i) "the location of the clients the lawyer serves" and (ii) "the activities the lawyer performs in each jurisdiction." *Id.*

7. Here, the inquirer does not indicate where his clients are located or whether he will represent any clients in Florida matters. If he works primarily for New York clients with respect to matters pending in New York courts, it may be that he principally practices in New York. But if he works primarily for Florida clients or on Florida matters, then he may principally practice in Florida. We lack sufficient facts to determine where the inquirer principally practices. *See* N.Y. State 1041 ¶ 14 (2014) ("ultimately, the determination of 'principally practices' is question of fact

that is beyond the Committee's jurisdiction to decide”).

8. Wherever the inquirer principally practices, however, Rule 8.5(b)(2)(ii) also requires us to consider an exception: does the "particular conduct" at issue "clearly" have its "predominant effect in another jurisdiction in which the lawyer is licensed to practice"? If so, then "the rules of that jurisdiction shall be applied to that conduct."

9. Determining the state where the "predominant effect" of a lawyer's conduct occurs when the lawyer's conduct is not in connection with a proceeding pending before a court is a question of fact requiring a nuanced analysis. In N.Y. State 1041 ¶ 15 (2014), a lawyer was admitted in New York but was "based" in the U.K. and "principally practiced" in the U.K. If most of his clients were in New York, however, we said the "predominant effect" of the lawyer's conduct would occur in New York, and the New York Rules would apply. But exactly where the predominant effect would occur was "a question of fact" that the Committee could not determine.

10. Here, we cannot determine whether the inquirer "principally practices" in New York or Florida. We also cannot determine where the "predominant effect" of his conduct will clearly be felt. Thus, we cannot determine whether the New York or Florida Rules of Professional Conduct apply when his conduct is not in connection with pending litigation.

Rules 7.1(a), 7.5(a), and 8.4(c)

11. If the New York Rules govern, then the inquirer must comply with Rule 7.5(a), which provides: "A lawyer or law firm may use internet web sites, professional cards, professional announcement cards, office signs, letterheads or similar professional notices or devices, provided the same do not violate these Rules or any statute or court rule." (Emphasis added.) At least three of "these Rules" are relevant.

12. One relevant New York Rule is Rule 7.1(a), which provides that a lawyer or law firm "shall not use or disseminate ... any advertisement that: (1) contains statements or claims that are false, deceptive or misleading ...." (Emphasis added.) An "advertisement" is defined in Rule 1.0(a) 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 which is for the retention of the lawyer or law firm." Here, the letterhead would not constitute an "advertisement" unless the statement about admission to the New York Bar is for the primary purpose of retention, which we cannot determine. In N.Y. State 964 ¶ 13 (2013), we said that where a letterhead "is used in the ordinary course of professional practice or social intercourse without the primary intent to secure retention, it does not constitute advertising."

13. If, however, the inquirer's primary purpose in stating that he is "Admitted to the New York Bar" is to attract clients who find that credential impressive, then his letterhead is an advertisement. Even if prospective clients reach out to him first, his letterhead would still be an advertisement if its primary purpose is to persuade them to retain him. Rule 7.1(a) permits an advertisement to include "dates of admission to any bar." It follows that a lawyer may list the jurisdictions in which he has been admitted to the bar (with or without the dates of admission). Thus, whether the inquirer's letterhead is an "advertisement" or not, Rule 7.1(a) permits him to state that he is admitted to the New York Bar.

14. A second relevant Rule is Rule 7.5, which governs law firm names and letterhead. *See* Rule 7.5, Cmt. [6] (stating that a "lawyer or law firm may use ... letterheads ... provided they do not violate any statute or court rule and are in accordance with Rule 7.1"). The inquirer's proposed Florida letterhead appears to comply with Rule 7.5. His truthful statement that he is admitted to the New York Bar does not "violate any statute or court rule" of which we are aware, and the

statement is “in accordance with Rule 7.1” as we explained above.

15. A third relevant Rule is Rule 8.4(c), which is broader than Rules 7.1(a) and 7.5(a) because it is not restricted to advertisements or letterhead. Rule 8.4(c) provides that a lawyer or law firm shall not “engage in conduct involving dishonesty, fraud, deceit or misrepresentation.” Here, as long as the inquirer remains admitted to practice in New York, the statement on his Florida letterhead that he is “Admitted to the New York Bar” does not involve dishonesty, fraud, deceit, or misrepresentation.

16. Of course, as we cautioned in N.Y. State 1235 ¶ 23 (2022), a New York lawyer who resides in Florida but represents New York clients over the internet from his law office in Florida “must comply with the physical office requirement of New York Judiciary Law § 470.” Compliance with § 470 is a question of law on which we do not opine.

17. We also caution that we have no jurisdiction to interpret the Florida Rules of Professional Conduct or other relevant Florida law. Thus, the inquirer should obtain guidance on Florida law to determine whether the Florida Rules or other law apply to his conduct.

**CONCLUSION:**

18. Under the New York Rules of Professional Conduct, a lawyer who is admitted to practice in both New York and Florida may state on the letterhead of his Florida office that he is “Admitted to the New York Bar,” even though his only physical office is in Florida.

(15-21B)