

ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

COMMITTEE ON ATTORNEY ADVERTISING

Appointed by the Supreme Court of New Jersey

JOINT OPINION

OPINION 718

ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

OPINION 41

COMMITTEE ON ATTORNEY ADVERTISING

**The *Bona Fide* Office Requirement and Listing of
Offices on Letterhead, Websites, or Other Advertisements**

The Advisory Committee on Professional Ethics (ACPE) received an inquiry about whether a home office or a “virtual office” can qualify as a *bona fide* office for the practice of law under *Rule* 1:21-1(a). The Committee on Attorney Advertising (CAA) also received several grievances regarding listing of office locations on letterhead. This Joint Opinion of the ACPE and the CAA addresses the requirements of *Rule* 1:21-1(a) and the propriety of listing certain locations as law offices on attorney letterhead, websites, or other advertisements.

1. Bona Fide Office

Rule 1:21-1(a) requires that a New Jersey attorney maintain a *bona fide* office for the practice of law.

For the purpose of this section, a *bona fide* office is a place where clients are met, files are kept, the telephone is answered, mail is received and the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during normal business hours to answer questions posed by the courts, clients or adversaries and to ensure that competent advice from the attorney can be obtained within a reasonable period of time.

[*R. 1:21-1(a).*]

The purpose of the *bona fide* office rule is to ensure that attorneys are available and can be found by clients, courts, and adversaries. See Committee on Attorney Advertising Opinion 19, 138 *N.J.L.J.* 286, 3 *N.J.L.* 1821 (September 19, 1994).

A so-called "virtual office" does not qualify as a *bona fide* office. A "virtual office" refers to a type of time-share arrangement whereby one leases the right to reserve space in an office building on an hourly or daily basis. Accordingly, an attorney's use of a "virtual office" is by appointment only. The office building ordinarily has a receptionist with a list of all lessees who directs visitors to the appropriate room at the appointed time. Depending on the terms of the lease, the receptionist may also receive and forward mail addressed to lessees or receive and forward telephone calls to lessees.

As noted above, a *bona fide* office is, in part, a place where "the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during normal business hours to answer questions posed by the courts, clients or adversaries" *R. 1:21-1(a)*. A "virtual office" cannot be a *bona fide* office since the attorney generally is not present during normal business hours but will only be present when he or she has reserved the space. Moreover, the receptionist at a "virtual office" does not qualify as a "responsible person acting

on the attorney's behalf" who can "answer questions posed by the courts, clients or adversaries." Presumably, the receptionist can redirect a telephone call to the attorney lessee of the "virtual office" much like an answering service, but would not be privy to legal matters being handled by the attorney and so would be unable to "act[] on the attorney's behalf" in any matter.

The ACPE notes that, in general, an attorney should not permit the receptionist of a "virtual office" to field telephone calls to the attorney. Prospective clients calling an attorney or law firm assume that they are reaching an employee and may disclose confidential and sensitive information. The "virtual office" receptionist is not an employee of the attorney's law firm and should not be entrusted with confidential client information.

There is no prohibition on use of a home as a *bona fide* office for the practice of law provided that the home office meets the requirements of the *Rule*. An attorney who practices law from a home office should take appropriate steps to preserve confidentiality of client information. Accordingly, client meetings must be in private, files should be secure, and the attorney's computer, telephone, answering machine, fax machine, and the like should not be accessible to persons not associated with the law practice so that there is no inadvertent disclosure of confidential information.

Rule 1:21-1(a) does not prohibit an attorney from meeting clients in a location other than the office. Attorneys are permitted, for example, to meet clients at the clients' homes or offices, or at another location that may be more convenient to the client. As long as the *bona fide* law office is in fact the place where the attorney can be found, and clients *could* be met there, an attorney's decision to meet clients at a location outside that office does not render the office noncompliant with *Rule 1:21-1(a)*.

The ACPE recognizes that many solo practitioners do not have support staff and so when they are in court, meeting clients, filing papers, or otherwise not in the office, no one is there

during normal business hours. Attorneys who are out of their offices generally are accessible by telephone, as calls to the office can readily be routed to a cell phone or other hand-held device. But *Rule* 1:21-1(a) also requires regular physical presence by the attorney at the office during business hours. An attorney who is out of the office during normal business hours does not violate the *bona fide* office rule provided the absence from the office is occasional and the attorney is otherwise reachable by telephone, email, or the like. If the attorney is regularly out of the office during normal business hours, then a responsible person must be present at the office.

2. Listing of Offices on Letterhead, Websites, or Other Advertisements

As noted above, the Committee on Attorney Advertising (CAA) received several grievances regarding listing of office locations on letterhead. Communications on letterhead, websites, or other advertisements, including the listing of office locations, must be accurate and not misleading. *RPC* 7.1(a). An attorney must have at least one *bona fide* office but may also list satellite office locations on letterhead, websites, and other advertisements provided the listing of such office locations is accurate and not misleading.

a. “Virtual Offices”

An attorney who has a *bona fide* office may also have a satellite office that is a “virtual office.” The attorney may list that “virtual office” satellite location on attorney or law firm letterhead, websites, or other advertisements, but the communication must state that the “virtual office” location is “by appointment only.”

A “virtual office” location is not a place where a client can meet with the attorney unannounced. An attorney is not routinely found at a “virtual office” location and would need to

make arrangements to reserve the space. Accordingly, while “virtual office” locations may be listed on attorney or law firm letterhead, websites, or other advertisements, the communication must state that the location is “by appointment only.”

b. Law Offices of Attorneys With Separate Law Practices Who Are “Of Counsel” to a Firm

The CAA reviewed letterhead that lists an office for the law firm that is, in actuality, the office location of a separate law firm with which the attorney has an “of counsel” relationship. An attorney may have a law practice at one firm and also be “of counsel” to a different firm. Committee on Attorney Advertising Opinion 21, 147 *N.J.L.J.* 979, 6 *N.J.L.* 475 (February 24, 1997). To be “of counsel” to a law firm, an attorney must have a “relationship with a law firm [that] is close, ongoing, and involves frequent contact for the purpose of providing consultation and advice” *Id.* The attorney designated as “of counsel” “will have hands-on responsibility for, or will frequently render advice on, a law firm’s matters.” *Id.* If these requirements are met, the attorney may be referred to as “of counsel” to a firm. *Id.*

If an attorney has a law practice at one firm and wants to list on that firm’s letterhead, websites, or other advertisements the office location of the separate firm with which he or she serves as “of counsel,” additional information must be provided. It is misleading merely to list that different law firm office on an attorney’s letterhead as if it were an office for his or her own firm. Therefore, the office location on the letterhead, websites, or other advertisements must include the name of the other law firm and the fact that the attorneys have an “of counsel” relationship.

For example, two solo practitioners, Samuel Smith and Judith Johnson, have officially affiliated as “of counsel” to each other’s firms in accordance with the principles in Opinion 21

but also maintain their separate law practices in separate office locations. Samuel Smith wants to list Judith Johnson's law firm office location on his own letterhead. The office location of Judith Johnson's firm may be listed on Samuel Smith's letterhead but additional language is required to identify the office location as that of a different law firm with whom Samuel Smith has an "of counsel" relationship. Samuel Smith's letterhead must state, next to the address for Judith Johnson's law firm, the name of Ms. Johnson's law firm and the fact that the attorneys have an "of counsel" relationship.

c. Law Offices of an Attorney, Not "Of Counsel" to the Firm, Who Merely Permits the Attorney to Meet Clients at the Office Location

The CAA has reviewed letterhead that lists, as one of the attorney's offices for the practice of law, an office of a separate law firm whose principal attorney merely agreed to permit his or her conference room or other office space to be used by the other attorney on an "as-needed basis." The CAA finds that it is inaccurate to present this office location as if it were an attorney's own law firm office. This office location may not be listed on the attorney's letterhead, websites, or other advertisements.

d. Office Space at a Nonlegal Business

The CAA reviewed letterhead that lists, as one of the attorney's offices for the practice of law, an office at a nonlegal business, such as a real estate office, whose business owner permits the lawyer to use the office space on an "as-needed basis." While an attorney or a law firm may share office space with another, nonlegal business, the two businesses must "maintain the separate practices and identities of the businesses and professions involved." Advisory

Committee on Professional Ethics Opinion 498, 109 *N.J.L.J.* 425 (May 20, 1982). Therefore, a law firm may not practice law from an office that is embedded within a nonlegal business office. That arrangement does not preserve the required “separate practices and identities” of the two businesses and does not ensure client confidentiality.

Because a law firm cannot have its own office for the practice of law embedded within a nonlegal business office, this office location may not be presented on an attorney’s law firm letterhead, websites, or other advertisements.

Accordingly, a home office can qualify as a *bona fide* office for the practice of law under *Rule* 1:21-1(a), but a “virtual office” does not. The listing of office locations on law firm letterhead, websites, or other advertisements must be accurate and not misleading.