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LegalLOOP

Ethics of VLOs and advertising in New York

The legal profession is in a state of flux. New technologies are changing the ways that lawyers advertise and deliver legal services. Internet-based tools, including social media and cloud computing, offer lawyers more choices than ever when it comes to running their practices and reaching potential clients.

As a result, innovation in the delivery of legal services, driven by rapid changes in technology, has increased greatly in recent years, with virtual law offices (VLOs) being a prime example. VLOs — where lawyers deliver legal services using an online portal — have become much more common, both because these types of practices are very flexible and cost-effective and because new cloud-based platforms have been introduced which are designed to support VLOs.

But as is always the case when lawyers innovate in the delivery of legal services, VLOs can trigger a host of ethical issues. Last month, the New York State Bar Association's Committee on Professional Ethics addressed some of those issues in Opinion 964 (April 4).

In this opinion, the committee addressed two questions asked by an attorney who operated a virtual law practice out of her home and provided legal services and interacted with clients primarily using the Internet or by other electronic means. The inquiring attorney sought clarification regarding two different issues: 1) Whether she could use a commercial mailbox service address, in lieu of her home address, as her only office address listed in advertisements, and 2) Whether she could use a commercial mailbox service address as the only office address listed on business cards and letterhead.

The committee first addressed the definition of the term "principal law office address" as set forth in Rule 7.1(h), which provides, in relevant part, that "[a]ll advertisements shall include ... the principal law office address ... of the lawyer or law firm whose services are being offered." The Committee reviewed past

iterations of this rule, including the advertising rules adopted by the Appellate Divisions in 2007, which changed the term "office address" as set forth in DR 2-101(k), the prior version of the rule, to "principal law office address" as it section now appears in DR 2-101(h), the current version of the rule.

The committee explained that it interpreted the fact that the term changed so little from one iteration of the rule to the next to mean that the Appellate Divisions' intent continued to be 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."

Accordingly, the committee concluded that in order to avoid misleading the legal consumer, all advertising for legal services must include the street address of the lawyer's principal office, even if that address is the lawyer's home address, as was the case with the inquiring attorney. However, the committee also determined that so long as the attorney's business cards and letterhead were not being used as advertising, but instead were being "used in the ordinary course of professional practice or social intercourse without primary intent to secure retention," then a mail drop address could be listed as the sole address without mention of the attorney's principal address — in this case, her home address.

I believe the committee's conclusion in this case is misguided and fails to acknowledge the realities of a 21st century law practice. In fact, I criticized the requirement that a lawyer include the address of a home office in advertisements back in 2007 when the new advertising rules were enacted. As I explained in 2007, one way to avoid the risk of misleading the legal consumer regarding an attorney's location while maintaining the privacy and safety of a lawyer with a home office is to require that attorney

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ney advertising list the county or city in which the attorney practices along with a mail drop address, but not the exact address of the home office.

This opinion surprised me, since more often than not, the New York State Bar is ahead of the curve when it comes to addressing the ethical issues triggered by new technologies. But in this case, the committee's decision is surprisingly short-sighted and penalizes innovative lawyers seeking to serve legal clients more efficiently and cost effectively. This is an unfortunate decision that

I don't think will withstand the test of time.

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