

Continuing Legal Education Written Materials

REUNION 2017

CLASS I

Are You as Ethically Sharp as a 2L?

1.5 CLE Credits

Lectured by

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NYU School of Law

**Vanderbilt Hall
40 Washington Square South
Saturday, April 29, 2017
9:30 – 11:00 a.m.**

CLE materials can be downloaded at:
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RULES AND OTHER AUTHORITIES

RULE 1.0: TERMINOLOGY

(a) “Advertisement” means 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. It does not include communications to existing clients or other lawyers.

**RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY
BETWEEN CLIENT AND LAWYER**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances, the client gives informed

RULE 1.4: COMMUNICATION

(a) A lawyer shall:

(1) promptly inform the client of: (i) any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(j), is required by these Rules; (ii) any information required by court rule or other law to be communicated to a client; and (iii) material developments in the matter including settlement or plea offers

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with a client's reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by these Rules or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RULE 1.5: FEES AND DIVISION OF FEES

(a) A lawyer shall not make an agreement for, charge, or collect an excessive or illegal fee or expense. A fee is excessive when, after a review of the facts, a reasonable lawyer would be left with a definite and firm conviction that the fee is excessive. The factors to be considered in determining whether a fee is excessive may include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent or made known to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

RULE 1.6: CONFIDENTIALITY OF INFORMATION

(b) A lawyer may reveal or use confidential information to the extent that the lawyer reasonably believes necessary:

(3) to withdraw a written or oral opinion or representation previously given by the lawyer and reasonably believed by the lawyer still to be relied upon by a third person, where the lawyer has discovered that the opinion or representation was based on materially inaccurate information or is being used to further a crime or fraud;

(5) (i) to defend the lawyer or the lawyer's employees and associates against an accusation of wrongful conduct; or (ii) to establish or collect a fee; or ...

Comments

Lateral Moves, Law Firm Mergers, and Confidentiality

[18A] When lawyers or law firms (including in-house legal departments) contemplate a new association with other lawyers or law firms through lateral hiring or merger, disclosure of limited information may be necessary to resolve conflicts of interest pursuant to Rule 1.10 and to address financial, staffing, operational, and other practical issues. However, Rule 1.6(a) requires lawyers and law firms to protect their clients' confidential information, so lawyers and law firms may not disclose such information for their own advantage or for the advantage of third parties absent a client's informed consent or some other exception to Rule 1.6.

[18B] Disclosure without client consent in the context of a possible lateral move or law firm merger is ordinarily permitted regarding basic information such as: (i) the identities of clients or other parties involved in a matter; (ii) a brief summary of the status and nature of a particular matter, including the general issues involved; (iii) information that is publicly available; (iv) the lawyer's total book of business; (v) the financial terms of each lawyer-client relationship; and (vi) information about aggregate current and historical payment of fees (such as realization rates, average receivables, and aggregate timeliness of payments). Such information is generally not "confidential information" within the meaning of Rule 1.6.

[18C] Disclosure without client consent in the context of a possible lateral move or law firm merger is ordinarily not permitted, however, if information is protected by Rule 1.6(a), 1.9(c), or

Rule 1.18(b). This includes information that a lawyer knows or reasonably believes is protected by the attorney-client privilege, or is likely to be detrimental or embarrassing to the client, or is information that the client has requested be kept confidential. For example, many clients would not want their lawyers to disclose their tardiness in paying bills; the amounts they spend on legal fees in particular matters; forecasts about their financial prospects; or information relating to sensitive client matters (e.g., an unannounced corporate takeover, an undisclosed possible divorce, or a criminal investigation into the client's conduct). 37

[18D] When lawyers are exploring a new association, whether by lateral move or by merger, all lawyers involved must individually consider fiduciary obligations to their existing firms that may bear on the timing and scope of disclosures to clients relating to conflicts and financial concerns, and should consider whether to ask clients for a waiver of confidentiality if consistent with these fiduciary duties – see Rule 1.10(e) (requiring law firms to check for conflicts of interest). Questions of fiduciary duty are legal issues beyond the scope of the Rules.

[18E] For the unique confidentiality and notice provisions that apply to a lawyer or law firm seeking to sell all or part of its practice, see Rule 1.17 and Comment [7] to that Rule.

[18F] Before disclosing information regarding a possible lateral move or law firm merger, law firms and lawyers moving between firms – both those providing information and those receiving information – should use reasonable measures to minimize the risk of any improper, unauthorized or inadvertent disclosures, whether or not the information is protected by Rule 1.6(a), 1.9(c), or 1.18(b). These steps might include such measures as:

- (1) disclosing client information in stages; initially identifying only certain clients and providing only limited information, and providing a complete list of clients and more detailed financial information only at subsequent stages;

- (2) limiting disclosure to those at the firm, or even a single person at the firm, directly involved in clearing conflicts and making the business decision whether to move forward to the next stage regarding the lateral hire or law firm merger; and/or

- (3) agreeing not to disclose financial or conflict information outside the firm(s) during and after the lateral hiring negotiations or merger process.

RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if a reasonable lawyer would conclude that either:

- (1) the representation will involve the lawyer in representing differing interests;
- (2) there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests.

Comment

Personal-Interest Conflicts

[11] When lawyers representing different clients in the same matter or in substantially related matters are closely related, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers, before the lawyer agrees to undertake the representation. Thus, a lawyer who has a significant intimate or close family relationship with 41 another lawyer ordinarily may not represent a client in a matter where that other lawyer is representing another party, unless each client gives informed consent, as defined in Rule 1.0(j).

RULE 1.8: CURRENT CLIENTS: SPECIFIC CONFLICT OF INTEREST RULES

(a) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise professional judgment therein for the protection of the client, unless:

(1) the transaction is fair and reasonable to the client and the terms of the transaction are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking, and is given a reasonable opportunity to seek, the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

RULE 1.9: DUTIES TO FORMER CLIENTS

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use confidential information of the former client protected by Rule 1.6 to the disadvantage of the former client, except as these Rules would permit or require with respect to a current client or when the information has become generally known; or

(2) reveal confidential information of the former client protected by Rule 1.6 except as these Rules would permit or require with respect to a current client.

RULE 1.10: IMPUTATION OF CONFLICTS OF INTEREST

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 1.7, 1.8 or 1.9, except as otherwise provided therein.

(b) When a lawyer has terminated an association with a firm, the firm is prohibited from thereafter representing a person with interests that the firm knows or reasonably should know are materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm if the firm or any lawyer remaining in the firm has information protected by Rule 1.6 or Rule 1.9(c) that is material to the matter.

RULE 1.11: SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

(a) Except as law may otherwise expressly provide, a lawyer who has formerly served as a public officer or employee of the government:

(1) shall comply with Rule 1.9(c); and

(2) shall not represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation. This provision shall not apply to matters governed by Rule 1.12(a).

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the firm acts promptly and reasonably to:

(i) notify, as appropriate, lawyers and nonlawyer personnel within the firm that the personally disqualified lawyer is prohibited from participating in the representation of the current client;

(ii) implement effective screening procedures to prevent the flow of information about the matter between the personally disqualified lawyer and the others in the firm;

(iii) ensure that the disqualified lawyer is apportioned no part of the fee therefrom; and

(iv) give written notice to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule; and

(2) there are no other circumstances in the particular representation that create an appearance of impropriety.

(c) Except as law may otherwise expressly provide, a lawyer having information that the lawyer knows is confidential government information about a person, acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term “confidential government information” means information that has been obtained under governmental authority and that, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to

disclose, and that is not otherwise available to the public. A firm with which that lawyer is associated may 70 undertake or continue representation in the matter only if the disqualified lawyer is timely and effectively screened from any participation in the matter in accordance with the provisions of paragraph (b).

RULE 1.18: DUTIES TO PROSPECTIVE CLIENTS

(a) Except as provided in Rule 1.18(e), a person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing; or

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the firm acts promptly and reasonably to notify, as appropriate, lawyers and nonlawyer personnel within the firm that the personally disqualified lawyer is prohibited from participating in the representation of the current client;

(ii) the firm implements effective screening procedures to prevent the flow of information about the matter between the disqualified lawyer and the others in the firm;

(iii) the disqualified lawyer is apportioned no part of the fee therefrom; and

(iv) written notice is promptly given to the prospective client; and

(3) a reasonable lawyer would conclude that the law firm will be able to provide competent and diligent representation in the matter.

(e) A person is not a prospective client within the meaning of paragraph (a) if 100 the person:

- (1) communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship; or
- (2) communicates with a lawyer for the purpose of disqualifying the lawyer from handling a materially adverse representation on the same or a substantially related matter.

RULE 3.3: CONDUCT BEFORE A TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal controlling legal authority known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer or use evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

RULE 4.2: COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

(a) In representing a client, a lawyer shall not communicate or cause another to communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the prior consent of the other lawyer or is authorized to do so by law.

(b) Notwithstanding the prohibitions of paragraph (a), and unless otherwise prohibited by law, a lawyer may cause a client to communicate with a represented person unless the represented person is not legally competent, and may counsel the client with respect to those communications, provided the lawyer gives reasonable advance notice to the represented person's counsel that such communications will be taking place.

(c) A lawyer who is acting pro se or is represented by counsel in a matter is subject to paragraph (a), but may communicate with a represented person, unless otherwise prohibited by law and unless the represented person is not legally competent, provided the lawyer or the lawyer's counsel gives reasonable advance notice to the represented person's counsel that such communications will be taking place.

RULE 4.3: COMMUNICATING WITH UNREPRESENTED PERSONS

In communicating on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person other than the advice to secure counsel if the lawyer knows or reasonably should know that the interests of such person are or have a reasonable possibility of being in conflict with the interests of the client.

RULE 7.1: ADVERTISING

(d) An advertisement that complies with paragraph (e) may contain the following:

(1) statements that are reasonably likely to create an expectation about results the lawyer can achieve;

(e) It is permissible to provide the information set forth in paragraph (d) provided:

(3) it is accompanied by the following disclaimer: “Prior results do not guarantee a similar outcome”; and

(f) Every advertisement other than those appearing in a radio, television or billboard advertisement, in a directory, newspaper, magazine or other periodical (and any web sites related thereto), or made in person pursuant to Rule 7.3(a)(1), shall be labeled “Attorney Advertising” on the first page, or on the home page in the case of a web site. If the communication is in the form of a self-mailing brochure or postcard, the words “Attorney Advertising” shall appear therein. In the case of electronic mail, the subject line shall contain the notation “ATTORNEY ADVERTISING.”

GEORGIA RULE 5.5:

UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

CHAPTER 1

GEORGIA RULES OF PROFESSIONAL CONDUCT AND ENFORCEMENT THEREOF

- a. A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- b. A Domestic Lawyer shall not:
 - 1. except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
 - 2. hold out to the public or otherwise represent that the Domestic Lawyer is admitted to practice law in this jurisdiction.
- c. A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:
 - 1. are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
 - 2. are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the Domestic Lawyer, or a person the Domestic Lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
 - 3. are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or
 - 4. are not within paragraphs (c) (2) or (c) (3) and arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice.
- d. A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:
 - 1. are provided to the Domestic Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or
 - 2. are services that the Domestic Lawyer is authorized to provide by federal law or other law of this jurisdiction.
- e. A Foreign Lawyer shall not, except as authorized by this Rule or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of

law, or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. Such a Foreign Lawyer does not engage in the unauthorized practice of law in this jurisdiction when on a temporary basis the Foreign Lawyer performs services in this jurisdiction that:

1. are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
 2. are in or reasonably related to a pending or potential proceeding before a tribunal held or to be held in a jurisdiction outside the United States if the Foreign Lawyer, or a person the Foreign Lawyer is assisting, is authorized by law or by order of the tribunal to appear in such proceeding or reasonably expects to be so authorized;
 3. are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceedings held or to be held in this or another jurisdiction, if the services arise out of or are reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice;
 4. are not within paragraphs (2) or (3) and
 - i. are performed for a client who resides or has an office in a jurisdiction in which the Foreign Lawyer is authorized to practice to the extent of that authorization; or
 - ii. arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or
 - iii. are governed primarily by international law or the law of a non-United States jurisdiction....
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New York Court of Appeals Rules
§520.10 Admission Without Examination

(a) General. In its discretion, the Appellate Division may admit to practice without examination an applicant who:

(1) (i) has been admitted to practice in the highest law court in any other state or territory of the United States or in the District of Columbia; or

(ii) has been admitted to practice as an attorney and counselor-at-law or the equivalent in the highest court in another country whose jurisprudence is based upon the principles of the English common law; and

(iii) is currently admitted to the bar in such other jurisdiction or jurisdictions, that at least one such jurisdiction in which the attorney is so admitted would similarly admit an attorney or counselor-at-law admitted to practice in New York State to its bar without examination; and

(2) (i) while admitted to practice as specified in paragraph (1) of this subdivision, has actually practiced therein, for at least five of the seven years immediately preceding the application:

(a) in its highest law court or highest court of original jurisdiction in the state or territory of the United States, in the District of Columbia or in the common law country where admitted; ...

NEW YORK COUNTY LAWYERS ASSOCIATION
Committee on Professional Ethics

QUESTION NO. 682

TOPIC: UNADMITTED LAW
SCHOOL GRADUATES AND
LAWYERS ADMITTED IN OTHER
JURISDICTIONS: LETTERHEAD;
BUSINESS CARDS; SIGNING DOCU-
MENTS; ACTIVITIES NON-
LAWYERS MAY PERFORM.

DIGEST: Law school graduates who have not yet been admitted to the bar and lawyers licensed in other states may be listed on firms' letterheads and business cards. They may sign documents and letters on behalf of law firms only if their status is disclosed, and may perform the kind of activities that may be performed by any non-lawyer employee.

CODE: DR 2-101(A), DR 2-101(D),
DR 3-101(A), DR 3-101(B), DR
2-101(A)(4); EC 3-5; EC 3-6; EC 3-8;
EC 3-9.

QUESTIONS:

- (1) May the letterhead of a New York law firm list a law school graduate not yet admitted to the New York Bar and/or a lawyer licensed to practice only in another state?
- (2) May a law graduate not yet admitted to the New York Bar or a lawyer licensed only in another state have a business card with his or her name and the name, address and telephone number of his or her employer, a New York law firm?
- (3) What ethical guidelines govern a law graduate not yet admitted to the New York Bar or a lawyer licensed to practice only in another state when signing documents or letters on behalf of a New York law firm?
- (4) What activities may be performed by an lawyer not yet admitted to the New York Bar or a lawyer licensed to practice only in another state?

OPINION:

Letterhead

A lawyer licensed to practice law in another jurisdiction but not in New York may be listed on the firm's stationery, provided the letterhead indicates the jurisdictional limitations of the unadmitted lawyer through some appropriate notation (e.g., "Not Admitted in New York" or "Admitted only in New Jersey"). See DR 2-102(D); ABA 316 (1967); N.Y. State 434 (1976); N.Y. State 355 (1974); Philadelphia Bar Association 81-63 (1981).

By analogy, it would not be improper to list a law school graduate not yet admitted to the bar on a firm's letterhead, provided the letterhead clearly indicates that the law graduate is not admitted. Cf. New York County 673 (1989) (paralegals may be included on firm letterhead with appropriate designation). The disclosure requirement is necessary to avoid misleading the public as to the capacity of the person who is listed on the letterhead.

Business Cards

The Code allows a lawyer to use or disseminate any public communication as long as it is not false, deceptive or misleading. DR 2-101(A). In dealing with the issuance of professional cards of a lawyer or law firm, DR 2-102(A) permits inclusion of the name of the lawyer and the name, address and telephone number of the law firm.

In New York County 673 (1989), we concluded it would be professionally proper for a paralegal to use a business card with the firm name appearing on it, provided that the status of the paralegal were clearly revealed on the card. See also N.Y. County 666 (1985); N.Y. City 884 (1974). We see no reason to distinguish between a paralegal and a law graduate not yet admitted to the New York Bar or a lawyer admitted only in another jurisdiction. We believe that a law school graduate whose bar admission is pending may use a business card, provided that he or she is identified as a non-lawyer on the card. Likewise, a lawyer admitted to practice in another state but not in New York may use a business card, provided that the jurisdictional limitation on the lawyer's practice is made clear on the card. See also ABA 316 (1967).

An associate's business card need not designate the precise status of the associate (i.e., "Fourth Year Associate") or indicate the fact that the associate is only an associate as opposed to a partner in the law firm. So long as the individual is a lawyer, we do not believe that further designation of the lawyer's status in the firm -- e.g., associate, of counsel, senior associate, junior partner -- is ethically required. But cf. N.Y. County 612 (1973) (letterhead must differentiate between partners and associates); N.Y. City 890 (1977) (same).

Signing Letters and Other Documents

In the opinion of the Committee, it is professionally proper for a law school graduate not yet admitted to the New York Bar to sign his or

her name on documents and letters on behalf of a New York law firm. However, the lawyer must clearly indicate that he or she has not yet been admitted to any bar and may not hold himself or herself out as a "Lawyer" or "Attorney at Law" on stationery. See, e.g., Philadelphia Bar Association 81-65 (1981). See also Judiciary Law § 578. The unadmitted law graduate must disclose his or her non-lawyer status by including an appropriate term such as "Law Clerk" or "Legal Clerk" or "Not Admitted" after his or her signature. See, e.g., New York County 641 (1975); New York City 884 (1974).

Likewise, a lawyer who is licensed to practice law only in a foreign jurisdiction and is not listed on a New York law firm's letterhead must indicate the jurisdictional limitation following his or her signature so that there can be no implication that the person signing is admitted to the bar of this state. Whenever such a lawyer signs his or her name on firm stationery or any other legal paper that does not clearly set forth jurisdictional limitations on the lawyer's practice, he or she must clearly identify his or her status by an appropriate designation under the signature, such as "Admitted only in Massachusetts" or "Not Admitted in New York."

Activities

It is clear that no one but a lawyer duly admitted to the bar of this state may practice law here. See EC 3-5; EC 3-9 ("[a]uthority to engage in the practice of law conferred in any jurisdiction is not per se a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where he or she is not permitted by law or by court order to do so"); Judiciary Law §§ 478 and 484. What constitutes the practice of law is a legal question that is beyond the scope of this Committee's jurisdiction. However, certain ethical principles must be considered. Canon 3 and DR 3-101(A) of the Code prohibit a lawyer from aiding a non-lawyer in the unauthorized practice of law. See EC 3-5 and EC 3-8; N.Y. State 304 (1973). It is the responsibility of both the lawyer employer and the unadmitted law graduate or lawyer admitted only in another state to make certain that the latter does not engage in an activity which would be deemed to be the practice of law.

Nevertheless, non-lawyers may engage in a variety of activities under the supervision and direction of a lawyer. See N.Y. County 641 (1975)(quoting N.Y. County 420 (1953)). Various ethics opinions have established guidelines consisting of permitted and non-permitted activities for legal assistants and unadmitted lawyers. For convenience, we summarize them here. A person not admitted to the bar in this state:

- May not counsel clients about legal matters. See N.Y. City 884 (1974); N.Y. State 44 (1967); ABA 316 (1967); N.Y. City 78 (1927-28).
- May not appear in court. N.Y. City 884 (1974); N.Y. City 78 (1927-28); ABA 316 (1967).
- May not argue motions. N.Y. State 44 (1967).

- May not take depositions or EBTs, even if supervised throughout the deposition by a lawyer admitted to practice in New York. N.Y. State 304 (1973), N.Y. State 44 (1967).
- May not supervise the execution of a will. N.Y. State 343 (1974).
- May interview witnesses. N.Y. City 884 (1974).
- May draft documents of all kinds, including process, affidavits, deeds, contracts, pleadings, briefs and other legal papers, under the supervision of an admitted lawyer. N.Y. City 884 (1974); N.Y. City 78 (1927-28).
- May research questions of law. Id.
- May answer calendar calls provided no argument is necessary, and role is confined to purely ministerial activity. N.Y. State 44 (1967).
- May attend title or mortgage closings if it merely involves formalities, such as receipt or delivery of a deed or payment or receipt of money. N.Y. City 884 (1974); N.Y. City 78 (1927-28).

See also EC 3-5; EC 3-6; N.Y. County 666 (1985); N.Y. State 355 (1974).

CONCLUSION:

Law school graduates not yet admitted to the bar and lawyers licensed only in other states may be listed on firm letterhead and be provided business cards if their status is duly noted. They may sign documents and letters on behalf of New York law firms, provided disclosure is made of the fact that they are not admitted to practice law in this jurisdiction, and may perform the kinds of activities that may be performed by any non-lawyer employee.

November 11, 1990