

Chicago Daily Law Bulletin®

Volume 161, No. 114

Review your letterhead to stay out of trouble

Whether you have an established solo practice or are about to start one, take a moment to check your letterhead, business cards and even your e-mail signature. Choosing the content may sound straightforward for a one-person enterprise, but there are several pitfalls to avoid.

Letterhead content is broadly governed by Rule 7.1 of the Illinois Rules of Professional Conduct, which is titled "Communications Concerning a Lawyer's Services," and prohibits "false or misleading communication about the lawyer or the lawyer's services."

Rule 7.5, in turn, prohibits firm names and letterheads that are false or misleading within the meaning of Rule 7.1, and further imposes four restrictions to prevent confusion:

- Trade names are permitted, but practitioners must avoid names that "imply a connection with a government agency or with a public or charitable legal services organization." Rule 7.5(a).
- Firms may use "the same name or other professional designation" in multiple jurisdictions, but if a lawyer is not licensed in any state with an office specified on the letterhead, his or her "jurisdictional limitations" must be identified. Rule 7.5(b).
- Any lawyer "holding public office" must be excluded when he or she "is not actively and regularly practicing with the firm." Rule 7.5(c).
- Letterhead must not state or

imply a false connection between an attorney and a "partnership or other organization." Rule 7.5(d)

Sole practitioners have run afoul of Rule 7.5 on occasion and sometimes in unexpected ways.

For example, a longtime New York sole practitioner used the name "Cardenas & Associates" on his letterhead and business cards. Last year, a state appeals court affirmed the disciplinary panel's conclusion that the letterhead and cards violated New York's version of Rule 7.5. According to the court, the language "& Associates" was misleading because the attorney "did not employ any associates." *In re Cardenas*, 997 N.Y.S.2d 422, 423-24 (N.Y. App. Div. 2014).

South Carolina has joined New York in cautioning sole practitioners to accurately convey their single-member status on their letterhead. See *In re Defillo*, 762 S.E.2d 552, 553 (S.C. 2014) (Attorney's letterhead violated Rule 7.5 in part because it "contained the phrase 'Attorneys and Counselors at Law' when, in fact, respondent had no partners or associates at the times the letters were written."):

Another warning extends to sole practitioners who maintain multiple offices, particularly those who practice in state border areas. Avoid using nonlicensed-state addresses on your letterhead without proper disclosure.

As a case in point, a Washington, D.C., solo received an informal admonition for including a Maryland office address on her letterhead

SOLE SPEAK



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without disclosing she was not licensed in Maryland. Because the attorney also was licensed in Illinois, the Illinois Supreme Court issued a reciprocal reprimand. *In re Winstead*, 69 A.3d 390, 398 (D.C. 2013); see also *In re Winstead*, No. M.R.27011 (Ill. Sup. Ct. Jan. 16, 2015).

Even using a post office box on your letterhead for a nonlicensed jurisdiction — without disclosure — has been ruled a violation of Rule 7.5. *Attorney Grievance Commission v. Stinson*, 50 A.3d 1222, 1237-38 (Md. 2012) ("Respondent's use of law office letterhead ... showing only a Washington, D.C., post office box address, without indicating thereon that she was only licensed to practice law in Maryland and not in the District of Columbia, violated Rule

7.5(b).")

Moreover, although sole practitioners may use appropriate trade names under Rule 7.5(a), make sure the name is not misleading. A solo's letterhead was deemed improper, even though the firm's name consisted of the attorney's last name followed by "& Company," because the letterhead misrepresented "his position as a senior member of Leigh & Company when, in fact, he was a sole legal practitioner." *State v. Leigh*, 914 P.2d 661, 666 (Okla. 1996).

Also be aware that e-mail and faxes are subject to the same Rule 7.1 standards as letterhead. See *In re Winstead*, 69 A.3d at 398 (misleading communications included e-mail and faxes).

Keep in mind that letterhead transgressions can lead to troubles beyond state-imposed discipline. According to a federal judge in Massachusetts, several sole practitioners who used a single letterhead had "an affirmative duty" under Rule 7.5(d) to "disclaim any partnership if they are not, in fact, partners." *Andrews v. Elwell*, 367 F.Supp. 2d 35, 39-41 (D. Mass. 2005).

The court went on to decide that the group letterhead was "indicative" that a partnership-in-fact may exist, and consequently denied the sole practitioners' motion for summary judgment in a malpractice action, even though the movant-attorneys were not involved in the underlying case.

With those principles in mind, make a quick review of your stationery, cards and e-mail signature. It will be time well spent.