

NYS Office Requirements/Virtual Offices

I've had several discussions regarding starting my NY practice with a virtual office, and a question came out of those discussions:

In December, *the ABA Journal* reported<http://www.abajournal.com/news/article/work-at-home_lawyer_suspended_partly_for_lack_of_a_bona_fide_office/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email>on a Delaware lawyer who was disciplined for failing to maintain a "bona fide office," as per Delaware's rules. I've spent the last half hour researching NY rules on this topic, and the only thing I can seem to find is Judiciary Rule 470 <<http://codes.lp.findlaw.com/nycode/JUD/15/470>>, which deals with nonresident attorneys.

Starting with a temporary virtual office sounds like a good idea, but I'd hate to be disbarred on day 1. Any thoughts or info would be greatly appreciated.

I've been informed that I should reframe the question a bit for clarity.

The proposed arrangement is that I live in NYC, work out of my house, meet clients at an office where I pay for mail service and conference space when needed, and use the office address, rather than my own, as the office address I give clients.

New Jersey changed its rule in January, 2013. The link below would be helpful to you to begin your search for information re NY.

<http://www.mosessinger.com/site/files/virtuallawofficesnewandlastingfrontier.pdf>

You may also want to read the article below written by our very own Carolyn Elefant in My Shingle in September, 2011. It is a summary of Ekaterina Schoenefeld's very interesting and successful challenge to NY's requirement that non-resident attorneys maintain an office (whereas resident attorneys do not). Quote from the article is below the link.

Aside from going to your state courts website, I'd reach out to Carolyn if she has any other information re NY. She is a frequent and helpful contributor to this list. As for NY's courts website, you have my sympathies if you find it less than helpful and easy to navigate. The New Jersey judiciary website is fabulous.

SoloSez Popular Threads, January 2014

I'd also suggest asking Lisa Solomon. She is a wealth of information.

<http://myshingle.com/2011/09/articles/ethics-malpractice-issues/a-solo-fought-the-law-and-the-solo-won-ny-jud-code-470-found-unconstitutional/>

“Now, Schoenefeld’s wait is over – and she has prevailed! Yesterday, U.S. District Court Judge Lawrence Kahn (ND NY) issued this decision, concluding that “as a matter of law [Section 470 is unconstitutional] because it infringes on nonresident attorneys’ right to practice law in violation of the Privileges and Immunities Clause. First, the court found that the practice of law is “a fundamental right within the meaning of of the Privileges and Immunities Clause because the profession has both a commercial and noncommercial role in the United States.” The court then determined that Section 470 impermissibly infringed on Schoenefeld’s right to practice law in New York based on residency by placing an additional threshold cost on all nonresidents who practice in New York.

Quoting Schoenefeld’s brief, the court described:

Under Section 470, nonresident attorneys bear a significant competitive cost that resident attorneys do not: whereas “new York resident attorneys may practice law out of their basements,” “nonresidents are required to rent offices in New York (no matter how few in number their New York clients may be) in addition to maintaining offices and residences in their home states.”

Thus, the court found that Section 470’s requirement that nonresident attorneys maintain an office in-state implicates the fundamental right to practice law under the Privileges and Immunities Clause."

Donna R. Ireland, Paralegal

I have been following this case and the appeal is still pending before the Second Circuit more than one year past the date of oral arguments. The Court has been really slow in resolving the appeal.
Craig A. Stokes, Texas

I had the same question because I work primarily from home but rent "virtual" space where I meet clients, get mail, etc. I did not want to list my home address since I don't want potential clients showing up at my home. Apparently though, you are supposed to list on all advertising the address at which you can usually be found (where you generally spend your working time).

I called the Bar Association which confirmed this. They also referred me to a recent (in the last few years) ethics opinion about this. I don't have it to email you but there, the lawyer worked from home and rented

SoloSez Popular Threads, January 2014

virtual space where she met clients, received mail, etc. The opinion stated that she'd need to list her home address for advertising purposes. If you check NYSBA's website you can search for the opinion.

Since my website is advertising I include my home address on it. I do not use my letterhead and business cards for advertising though so I only list my virtual location on those. For what it's worth, I have not had any problems with potential clients appearing at my doorstep - though my client base is such that potential clients find me through word-of-mouth and not via my website so this might vary depending on practice area, client base, etc.

Jessica Gorman, New York

I found the opinion. It is Opinion 964 from April 4, 2013. Here is the link: <https://www.nysba.org/CustomTemplates/Content.aspx?id=342>

Jessica Gorman

I actually called the Office of Court Administration, and they told me I need to contact the bar association. I'll have to do that tomorrow, but the consensus seems to be that there is nothing wrong with it for someone who lives in NY.

Dwayne Allen Thomas, New Jersey

That makes sense, except I am used to looking up rules at our website. NY may not have the same resource.

Donna R. Ireland

Please post when the decision comes out.

Donna R. Ireland

Funny this came up today. Just got a decision in the mail that OCs motion was denied on the basis of Judiciary Law 470. Luckily it also said it would be denied on the merits otherwise so I should survive any Schoenfeld appeal result.

But I was surprised since OC said he is in NY a few times a month. Is it possible a judge has just never looked into it before and OC didn't know

SoloSez Popular Threads, January 2014

the rule? Judge had to go out of his way to try to look up OC. I never mentioned any of this in my arguments.

Eric Dawson, New York

Thanks for all the advice. It looks like the NY rule is that a lawyer who lives in NY works from home and visits clients at a shared office space has to use his home address in his advertisements. NJ has a similar rule (I had to provide that address for service via the Clerk of the Supreme Court).

This isn't the best option for me, so I'm going to stick with my original plan: work on contract until I save enough for a proper office. I don't have much debt, so I should have everything up and running by June or July *crosses fingers*.

Thanks for all the advice!
Dwayne Allen Thomas

With all due respect to the NYSBA and their ethics opinions, there are many bar associations in NY state and sometimes these attorney associations conflict in their ethical opinions. Admission and discipline is conducted by the appropriate Appellate Divisions, so while the NYSBA's opinions may be VERY persuasive, they are certainly not the end all be all rule. I am a member of the NYSBA and I do appreciate everything they do, but an ethics opinion from them may not keep you out of hot water if you make a blunder, so you shouldn't rely on it to be correct 100% of the time.

Michael Huerta, New York

The NYC Bar Association actively promotes the use of virtual office space for attorneys and even have their own virtual law firm program. See the following link - <http://www.nycbar.org/small-law-firm-center/virtual-law-firm-program>.

Samuel Katz, New York

Thank you so much for this link, Sam! I also was pondering the virtual office question and this sealed the deal for me.

Ryan Morrison

I wrote an article in May re: a recent NYSBA ethics opinion on virtual law firms. You can find it here<<http://nylawblog.typepad.com/suigeneris/2013/05/ethics-of-vlos-and-advertising-in-new-york-.html>>.

Summary of the article:

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.

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.

As I state at the end of the article, I think the decision is asinine and misguided.

Hope that helps a bit,

Nicole Black, New York
