

NEW HAMPSHIRE BAR ASSOCIATION
ETHICS COMMITTEE OPINION No. 2006-07/2
October 2006

IDENTIFICATION OF INACTIVE BAR MEMBERSHIP STATUS

RULE REFERENCES:

NHRPC 7.1

QUESTION: May an attorney admitted to the practice of law in New Hampshire who has elected “inactive” status identify himself/herself on firm letterhead or on a firm website as an “inactive” member of the New Hampshire Bar ?

BACKGROUND: An attorney who is admitted to practice law and is engaged in private law practice in another state has inquired whether it is permissible under the New Hampshire Rules of Professional Conduct to identify himself/herself on firm letterhead as admitted to the bar in New Hampshire Bar, but on inactive status.

RESPONSE: This inquiry concerns the ethical responsibilities of an attorney who is an inactive member of the New Hampshire bar relative to communications to the public of that attorney’s legal services and qualification to engage in the practice of law in New Hampshire. This issue is governed by Rule 7.1, which states:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement, considered in light of all the circumstances, not materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the rules of professional conduct or other law; or

(c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

The ethical question raised under Rule 7.1 is whether identifying oneself as admitted to practice law in New Hampshire while at the same time on “inactive” status falls into conduct that is proscribed by subpart (a) or (b) of the Rule. Because the election of “inactive” status precludes an attorney from engaging in the practice of law in New Hampshire, the identification of an attorney as “inactive” omits a fact necessary to avoid materially misleading the public about the ability of the attorney to engage in the

practice of law under subsection (a), and also creates an unjustified expectation that the “inactive” lawyer could represent a party in New Hampshire while on “inactive” status.

The Constitution of the New Hampshire Bar Association (“Constitution”), under authority from the legislature, requires all persons admitted to the bar in New Hampshire after July 1, 1969 to become members of the Bar Association and to remain in compliance with the requirements of membership. Const. Art. II, Sec. 1. *See also* RSA 311:7-g (authorizing the supreme court to require all persons engaged in the practice of law to belong to the bar association). The Constitution establishes two classes of membership: active and inactive. Under Art. II, Sec. 3, no inactive member “shall be entitled to practice law in [New Hampshire] . . .” The Constitution also provides that “except for the right reserved to litigants by statute to prosecute or defend a cause in person . . . no person other than an active member of this Association shall practice law in this State or in any manner hold himself or herself out as authorized or qualified to practice in this State.” Art. II, Sec. 3.

Since a layman could reasonably believe that identification of an attorney as admitted in New Hampshire means that the lawyer is *presently* able to counsel on matters involving New Hampshire law, when in fact the attorney is prohibited from such action by the fact of “inactive” status, then the communication would constitute a material misrepresentation of fact and/or likely create an unjustified expectation about results the lawyer could achieve in violation of NH R. Prof. C. 7.1.

The Committee notes that the Supreme Court is currently considering extensive proposed revisions to the Rules on Professional Conduct. While this opinion is issued under the Rules as presently in effect, we note that the text of Rule 7.1 is not proposed to be changed under the pending proposal.