

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 2005-6

Issued August 5, 2005

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

SYLLABUS: A lawyer or law firm should not participate in a local television station's advertising and public service program if entitled "Ask the Expert." The program name, not the program itself, is objectionable under the disciplinary rules. Lawyers may not hold themselves out as experts. If a television station's advertising and public service program is properly titled, the lawyer's participation is proper so long as the lawyer is able to comply with his or her ethical duties under the Ohio Code of Professional Conduct.

OPINION: This opinion addresses a question regarding a lawyer or law firm's participation in a television station's "Ask the Expert" program.

Is it proper for a lawyer or law firm to participate in an advertising and public service program entitled "Ask the Expert" sponsored by a local television station?

A law firm has been asked to participate in an "Ask the Expert" program sponsored by a local television station. "Ask the Expert" is described as both an advertising program and a public service program. There is a fee for participation.

The television station's "Ask the Expert" program has three components. One component is on air and Web site advertising of the program and its participating "experts" and their areas of practice. A second component is providing the public opportunity to e-mail questions to the "experts" from the station's Web site and to receive answers by e-mail. A third component is posting of the questions and answers on the station's Web site and broadcasting of selected questions and answers on the local news.

The "experts" are individuals or entities engaged in businesses or professions who have paid to participate in the program. Various business or professions are represented, such as legal, financial, medical, education, as well as "around the house" experts, such as landscapers, plumbers, and others.

On the television station's Web site, if an individual selects "legal expert" he or she will see an advertisement for a participating lawyer or law firm listing the

area of legal practice and other identifying information. A Web site visitor may e-mail a legal question to a lawyer or law firm, by completing an online form and sending it to the “expert.” An e-mail address must be provided on the form, but other personal information is optional. The Web site promises that if any personal information is provided it will remain confidential.

The title of the program “Ask an Expert” poses an ethical problem for Ohio lawyers. The name implies that the lawyer is an expert—someone with special competence or experience.

In Ohio, a lawyer may not claim or imply special competence or experience in a field of law, unless an exception applies: the lawyer is a patent attorney, trademark attorney, admiralty attorney; the lawyer is certified as a specialist in a field of law under the Rule XIV of the Supreme Court Rules for the Government of the Bar of Ohio; or the lawyer is certified by a bona fide private organization. This restriction is set forth in DR 2-105(A)(6).

DR 2-105(A)(6) A lawyer may state that his or her practice consists in large part or is limited to a field or fields of law. Except as provided in DR 2-105(A)(1), (4), and (5), a lawyer may not claim or imply special competence or experience in a field of law through use of the term “specialize” or otherwise.

There is no leeway for attorneys to use the term “expert” in advertising. Even attorneys who are given a reprieve from DR 2-105(A)(6) through the exceptions provided in DR 2-105(A)(1), (4), and (5) (attorneys who practice patent, trademark, and admiralty law, attorneys who are certified as specialists pursuant to the governing bar rules; and attorneys who are certified by private organizations) are not authorized to make claims that they are “experts.”

It is not the television station’s program that is objectionable under the disciplinary rules; it is the name of the program. Lawyers may not hold themselves out as experts.

Assuming that the term “expert” is removed from the advertising of the program, a lawyer may participate in the station’s advertising and public service program. Lawyers are permitted to advertise under DR 2-101 through DR 2-105. Lawyers are encouraged to participate in educational and public relations programs. See EC 2-2. Lawyers may educate the public by conducting seminars and participating in radio talk shows. See Ohio SupCt, Bd Comm’rs on Grievances and Discipline, Op. 94-13 (1994). Lawyer may respond to legal questions sent by e-mail. See Ohio SupCt, Bd Comm’rs on Grievances and Discipline, Op. 99-9 (1999).

A lawyer who wishes to engage in either activity should review the Board’s Opinions 94-13 (1994) and 99-9 (1999). These opinions provide guidelines for lawyers who answer questions from the public on the radio and by e-mail.

A special concern with the television station's program is that the e-mail requests to the lawyer for legal advice may be sent anonymously. A lawyer who gives legal advice to an anonymous individual risks a conflict of interest with a current or former client. Thus, if a lawyer receives a question from an anonymous individual by e-mail, the lawyer may provide only a general response regarding the law, but may not give individual legal advice. The lawyer should make this clear to the questioner.

In conclusion, a lawyer or law firm should not participate in a local television station's advertising and public service program if entitled "Ask the Expert." The program name, not the program itself, is objectionable under the disciplinary rules. Lawyers may not hold themselves out as experts. If a television station's advertising and public service program is properly titled, the lawyer's participation is proper so long as the lawyer is able to comply with his or her ethical duties under the Ohio Code of Professional Conduct.

Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney's Oath of Office.