

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

41 SOUTH HIGH STREET-SUITE 3370, COLUMBUS, OH 43215-6105
(614) 644-5800 FAX: (614) 644-5804

OFFICE OF SECRETARY

OPINION 91-1

Issued February 8, 1991

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

[Not current-subsequent rule amendments to Gov. Bar R. VI and X.]

SYLLABUS: Retired or retiring partners in a law firm who do not wish to fulfill continuing legal education requirements can acquire inactive status under Gov.Bar R. VI (8) and become exempt from continuing legal education (CLE) requirements under Gov.Bar R. X § 3 (E) (6). The listing in a law list or directory of retired or retiring partners, who have acquired inactive status under Gov.Bar R. VI (8) and who have become exempt from CLE requirements under Gov.Bar R. X § 3 (E) (6), as inactive partners of a law firm is misleading in that it gives the appearance that the inactive attorneys are authorized to practice law. DR 2-101. In some circumstances it could be appropriate for an attorney, who acquired inactive status under Gov.Bar R. VI (8) and became exempt from CLE requirements under Gov.Bar R. X § 3 (E) (6), to refer to himself as an inactive partner in a law firm so long as the context or manner of communication would not indicate to the listener that the attorney was authorized to practice law. Retired or retiring partners who have acquired inactive status under Gov.Bar R. VI (8) and who have become exempt from CLE requirements under Gov.Bar R. X § 3 (E) (6) can receive payment pursuant to a separation or retirement agreement. DR 2-107 (C).

OPINION: We have before us a request for an opinion on issues related to attorneys who acquire inactive status under Gov.Bar R. VI (8) and become exempt from continuing legal education (CLE) requirements under Gov.Bar R. X § 3 (E) (6). The specific questions to be addressed are as follows:

1. Whether partners in a law firm who are retired or retiring and who do not wish to fulfill CLE requirements can acquire inactive status exempting them from CLE requirements of Gov.Bar R. X;
2. Whether retired or retiring partners who have acquired inactive status under Gov.Bar R. VI (8) and become exempt from CLE under Gov.Bar R. X § 3 (E) (6) can be identified as inactive partners in the law firm through a listing in Martindale Hubbell or similar professional directories;

3. Whether retired or retiring partners who have acquired inactive status under Gov.Bar R. VI (8) and become exempt from CLE requirements under Gov.Bar R. X § 3 (E) (6) can refer to themselves as inactive partners in the law firm;
4. Whether retired or retiring partners who have acquired inactive status under Gov.Bar R. VI (8) and become exempt from CLE requirements under Gov.Bar R. X § 3 (E) (6) can receive compensation from the law firm other than retirement benefits?

Question 1

In an effort to maintain and improve the quality of legal services, the Supreme Court of Ohio requires continuing legal education for Ohio attorneys. Gov.Bar R. X § 1 (A). However, certain attorneys may become exempt from the educational requirements of the rule. Under Gov.Bar R. X § 3 (E) (6), an exemption is allowed for an attorney registered as inactive pursuant to Gov.Bar R. VI (8). Under Gov.Bar R. VI (8),

[a]ny attorney admitted to the practice of law in Ohio may acquire inactive status by making application to the Clerk for exemption from payment of the registration fee at the time of filing his Certificate of Registration. Such inactive attorney shall not be entitled to practice law nor hold himself out as authorized to practice law nor hold judicial office in this State until such time as he requests and is granted reinstatement of active status. Gov.Bar R. VI (8).

It is the opinion of the Board that partners in a law firm who are retired or retiring and who do not wish to fulfill CLE requirements can acquire inactive status under Gov.Bar R. VI (8) and become exempt from the CLE requirements under Gov.Bar R. X § 3 (E) (6). However, as previously expressed by the Board, "[a] lawyer who is registered 'inactive' under Governing Bar Rule VI cannot render services to others requiring the professional judgment of a lawyer." Ohio Sup.Ct., Op. 89-26 (1989).

Question 2

Law lists and directories are not specifically referred to in the Code of Professional Responsibility nor in the ABA Model Rules. This Board has previously stated that law lists are a legitimate form of advertising and therefore subject to DR 2-101. Ohio Sup.Ct., 88-4 (1988). The Board opined that a

lawyer may ethically be listed in a legal directory or law list provided the listing does not contain a false, fraudulent, misleading, or deceptive statement or claim (DR 2-101) and that the listing is in compliance with the provisions related to limitation of practice (DR 2-105). Ohio Sup.Ct., Op. 88-4 (1988).

The issue at hand is whether it would be false, fraudulent, misleading, or deceptive for a retired or retiring partner who has acquired inactive status under Gov.Bar R. VI (8) to be listed as an inactive partner of a firm in a law directory or list. A listing in a law list or directory of an attorney as inactive may indicate that the attorney is authorized to practice law but is not currently practicing. However, an attorney who has acquired inactive status "shall not be entitled to practice law nor hold himself out as authorized to practice law nor hold judicial office in this State until such time as he requests and is granted reinstatement of active status." Gov.Bar R. VI (8). Therefore, the opinion of this Board is that the listing in a law list or directory of retired or retiring partners, who have acquired inactive status under Gov.Bar R. VI (8), as inactive partners of a law firm is misleading in that it gives the appearance that the attorney is authorized to practice law.

Question 3

Communication in which an attorney makes reference to himself as an inactive partner in a firm can take place in many different contexts. Conversation about oneself with others is usually not a form of advertising. However, if the context is one in which the attorney is communicating as a form of publicity regarding himself, then the communication must not be false, fraudulent, misleading, or deceptive. DR 2-101.

Therefore, it is the opinion of the Board that in some contexts it could be appropriate for an attorney who has acquired inactive status under Gov.Bar R. VI (8) to refer to himself as an inactive partner in a law firm. However, the Board advises that the attorney who has acquired inactive status under Gov.Bar R. VI (8) must not refer to himself as an inactive partner in a firm if the context or manner of the communication would indicate to the listener that the attorney is now authorized to practice law, since attorneys who have acquired inactive status are not entitled to practice law nor hold themselves out as practicing law. Gov.Bar R. VI (8).

Question 4

The Code of Professional Responsibility contains provisions regarding the division of fees among lawyers. DR 2-107. The rule "does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement." DR 2-107 (C). The Code does prohibit a lawyer from entering an agreement for, charging, or collecting an illegal or clearly excessive fee. DR 2-106 (A). The Code also contains provisions regarding dividing fees with a non-lawyer. DR 3-102. In general, the rule prohibits a lawyer or law firm from sharing legal fees with a non-lawyer with certain exceptions which include allowing non-lawyer employees to share in a retirement plan. DR 3-102 (A) (3).

It is the opinion of the Board that an attorney who has acquired inactive status under Gov.Bar R. VI (8) is not considered to be a non-lawyer employee and therefore the provisions of DR 3-102 do not apply. The Board is of the opinion that DR 2-107 (C) which expressly allows payment to former partners or associates pursuant to a separation or retirement agreement is applicable to former partners who have acquired inactive status under Gov.Bar R. VI (8). There are no provisions within the Gov.Bar Rules that would indicate otherwise. In conclusion, it is the opinion of the Board that retired or retiring partners who have acquired inactive status under Gov.Bar R. VI (8) can receive payment pursuant to a separation or retirement agreement that was arrived at when the retiring partner was active and not under disciplinary order from the Supreme Court of Ohio.

This is an informal, non-binding advisory opinion based upon the facts presented and limited to questions arising under the Supreme Court Rules for the Government of the Bar of Ohio and the Code of Professional Responsibility.