

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 93-1

Issued February 12, 1993

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]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. III, eff. Nov. 1, 1995.]

SYLLABUS: It is improper for two firms to jointly establish a 900 service to provide legal information on employment law since the lawyers would be practicing law with more than one firm.

It is improper for two law firms to jointly establish a 900 service to provide primarily non-legal advice to parents of handicapped students and to also offer legal advice since the lawyers would be practicing law with more than one firm.

It is proper for a law firm to advertise through flyers, newspapers, or radio a 900 line which provides legal advice on employment law as "Employment Information Line, a service of X Firm."

It is proper for a law firm in advertising the availability of a 900 telephone number to identify that one of the attorneys holds a degree in another field, unless the attorney is engaged in the profession or business which that degree indicates, as well as in the practice of law.

OPINION: Attorneys practicing in different law firms wish to jointly operate two 900 telephone information lines. The attorneys would like to provide legal information on one line, and primarily non-legal information on the other line. The questions presented are set forth below.

1. Is it proper for two law firms to jointly operate a 900 telephone information line to provide legal information on employment law?
2. Is it proper for two law firms to jointly operate a 900 line which provides primarily non-legal advice to parents of handicapped students but which also offers legal advice when appropriate?
3. Is it proper for a law firm to advertise through flyers, newspapers, or radio a 900 line for legal advice on employment law as "Employment Information Line, a service of X Firm?"
4. Is it proper for a law firm in advertising the availability of a 900 telephone number to identify that one of the attorneys holds a degree in another field?

Question One

A 900 telephone service provides information to callers on a pay-per-call basis. Such services are available through long distance carriers. The content of the information and the rate of charge is set by the information provider. Callers are either charged per-minute or per-call and the charge appears on the monthly telephone bill of the caller.

In Opinion 92-10 this Board advised that within the ambit of certain ethical restrictions, it is proper under the Ohio Code of Professional Responsibility for a law firm to advertise and operate a dial-a-lawyer service that offers legal advice over the telephone for a fee. See Ohio SupCt Bd of Comm'rs on Grievances and Discipline, Op. 92-10 (1992) for a discussion of applicable disciplinary rules and ethical restrictions. See also, Alabama State Bar, RO-91-24 (1991), Kansas Bar Ass'n, Op. 92-06 (1992), Philadelphia Bar Ass'n, Op. 91-26 (1991), Philadelphia Bar Ass'n, Op.91-15 (1991), Pennsylvania Bar Ass'n, Informal Op. 90-156 (1991).

The Board must now consider whether two law firms may jointly provide legal information through a 900 number. In Opinion 89-35 the Board advised that "[a]n attorney at law may not practice with more than one legal professional association or law firm in Ohio at the same time." The Board cited multiple ethical concerns underpinning that advice. For example, it is potentially misleading and may be confusing to the public (DR 2-101). It creates the potential for the disclosure of confidential information between the firms and lawyers. [DR 4-101 (B)]. It may increase the number of conflicts of interest for the attorneys involved (Canon 5). It may be difficult for the lawyers to exercise professional judgment solely for the benefit of a client and free of outside influences (EC 5-1, 5-13, 5-24). There is a governing bar rule stating that "[n]o attorney at law shall be associated in any capacity with a legal professional association other than the one with which he is actively and publicly associated" [Gov.Bar R. III §3 (D)]. Ohio SupCt Bd of Comm'rs on Grievances and Discipline, Op. 89-35 (1989).

The requester suggested in the letter of inquiry that the joint operation of a 900 line by two law firms might be considered a co-counsel arrangement as opposed to a practice with more than one firm. The Board rejects this view since the joint operation of a telephone information service has ongoing financial and professional responsibilities that go beyond co-counseling on a particular case.

In operating a telephone information service, a lawyer owes the caller all the traditional duties owed by a lawyer to a client. See Ohio SupCt Bd of Comm'rs on Grievances and Discipline, Op. 92-10 (1992). A lawyer should not practice law

with more than one law firm. See Ohio SupCt Bd of Comm'rs on Grievances and Discipline, Op. 89-37 (1989). Thus, in answer to Question One, this Board's opinion is that although it may be proper for a lawyer or law firm to establish a 900 service to provide legal service, it is improper for two firms to jointly establish a 900 service since the lawyers would be practicing law with more than one firm.

Question Two

As set forth in response to Question One, it is not proper for two firms to jointly establish a 900 service to provide legal service since the lawyers would be practicing law with more than one firm. Similarly, it is improper for two law firms to jointly establish a 900 service to provide primarily non-legal advice to parents of handicapped students and to also offer legal advice since the lawyers would be practicing law with more than one firm.

The Board at this time does not address the unraised but related question of whether it is proper for an individual lawyer or a single law firm to establish a 900 service to provide primarily non-legal advice to parents of handicapped students and to also offer legal advice when appropriate. The Board does note that the language of Rule III Section I of the Supreme Court Rules for the Government of the Bar authorizes a legal professional association "to engage in the practice of law in Ohio and in such other activities only as are essential to the practice of law."

Question Three

The Board now considers whether it is proper for a law firm to advertise through flyers, newspapers, or radio a 900 line which provides legal advice on employment law as "Employment Information Line, a service of X Firm."

Disciplinary Rule 2-101 (B) (1), amended effective January 1, 1993, states that "[s]ubject to the limitations contained in these rules: A lawyer or law firm may advertise services through newspapers, periodicals, trade journals, 'shoppers,' and similar print media, outdoor advertising, radio and television, and written communication." Thus, flyers, newspapers, or radio are acceptable media for advertising.

The Board acknowledges that some long distance carriers require that each 900 line be given a descriptive name that would appear on the caller's bill. In a legal advertisement, the use of a descriptive name for a 900 line could cause confusion as to whether the descriptive name is a trade name for the law firm. This must be avoided since Disciplinary Rule 2-102 (B) prohibits lawyers from practicing under a trade name. The

Board's view is that the confusion could be eliminated in a legal advertisement if the descriptive name for the 900 line is followed by the words, "a service of X law firm." Therefore, this Board advises that it is proper for a law firm to advertise through flyers, newspapers, or radio a 900 line which provides legal advice on employment law as "Employment Information Line, a service of X Firm," so long as the advertisement complies with Disciplinary Rule 2-101.

Question Four

The final question is whether it is proper for a law firm in advertising the availability of a 900 telephone number to identify that one of the attorneys holds a degree in another field. Disciplinary Rule 2-101 (D) amended effective January 1, 1993 sets forth information that is presumed to be informational rather than solely promotional or self-laudatory. The rule states that such information is acceptable for dissemination if accurate and presented in a dignified manner. Under Disciplinary Rule 2-101 (D) (5) "schools attended, with dates of graduation and degrees conferred" are "presumed to be informational." Under Disciplinary Rule 2-101 (D) (8) "memberships in bar associations and other professional organizations," are "presumed to be informational." Under Disciplinary Rule 2-101 (D) (9) "technical and professional licenses" are "presumed to be informational." Therefore, under these rules it appears proper to identify that a lawyer holds a degree in another field.

However, there is a prohibition in Disciplinary Rule 2-102 (E) that "[a] lawyer who is engaged both in the practice of law and another profession or business shall not so indicate on his [her] letterhead, office sign, or professional card, nor shall he [she] identify himself [herself] as a lawyer in any publication in connection with his [her] other profession or business." The Board advises that it is proper for a law firm in advertising the availability of a 900 telephone number to identify that one of the attorneys holds a degree in another field, unless the attorney is engaged in the profession or business which that degree indicates, as well as in the practice of law.

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.