

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 88-4**

Issued: April 25, 1988

*[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]*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 DR 2-101, eff. Jan. 1, 1993 and Aug. 16, 1993; DR 2-105, eff. Jan. 1, 1993.]*

**SYLLABUS:** 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. With the exception of patent, trademark and admiralty lawyers, a lawyer shall not hold himself out publicly as a specialist. A lawyer may state that his practice consists in large part or is limited to a field or fields of law but may not claim or imply special competence or experience in a field of law through use of the term “specialize” or otherwise.

**OPINION:** We have before us two separate requests for advisory opinions which relate to law lists or legal directories. The first request concerns the inclusion of a legal directory in a domestic relations book published for use by non-lawyers. The legal directory will list attorneys by cities and include their address and telephone number, but will not represent that the attorneys are specialists in domestic relations law. The listed attorneys will be billed directly by the publisher at a flat rate for the listing.

The second request concerns an attorney who inquires whether submitting his name and eventually being listed in a national referral directory, which lists law firms by specialties, is a violation of the Code of Professional Responsibility.

Until 1977 there was a specific provision in the Code which related to law lists. Code of Professional Responsibility DR 2-102(A)(6) (1969). The Code “originally regulated lawyer advertising in law lists by limiting its approval by a special committee of the ABA.” Wolfram, *Modern Legal Ethics* 775 (1986). Any reference to law lists was deleted from the Code under the threat of antitrust suits. *Id.* Law lists or legal directories are now treated as another form of lawyer advertising. *Id.*

Regarding law lists in general, it is our opinion that they are a legitimate form of advertising and therefore subject to DR 2-101. A lawyer may publish information in written or printed material distributed to consumers through the mail or otherwise. Code of Professional Responsibility DR 2-101(B). However, a lawyer shall not participate in the use of any form of communication containing a false, fraudulent, misleading, or deceptive statement or claim. Code of Professional Responsibility DR 2-101(A).

Based upon these provisions, a lawyer may ethically be listed in a legal directory or law list provided the listing does not contain any false, fraudulent, misleading, or deceptive statement or claim. The Code states that a communication is false or misleading if it:

1. [c]ontains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
2. [i]s 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 Code of Professional Responsibility or other law; or
3. [i]s subjectively self-laudatory, or compares a lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

Code of Professional Responsibility DR 2-101(C).

Therefore, a lawyer may ethically be listed in a legal directory or law list as long as he or she complies with the limitations set forth above and in the Code. A lawyer may not, however, allow his or her name to be included in a law list which states or implies that the listed lawyers are specialists. Under DR 2-105 a lawyer shall not hold himself out publicly as a specialist with the exception of patent, trademark and admiralty lawyers. A lawyer may however, state that his or her practice consists in large part or is limited to a field or fields of law. "A lawyer may not claim or imply special competence or experience in a field or fields of law through use of the term "specialize" or otherwise." Code of Professional Responsibility DR 2-105(A)(5).

In conclusion, it is our opinion, and you are so advised that a law list is a form of advertising that a lawyer may participate in, provided he or she complies with the limitations on advertising that appear in DR 2-101. A lawyer may not claim or imply special competence or experience in a field of law through use of the term “specialize” or otherwise.

**This is an informal, non-binding advisory opinion based upon the facts presented and limited to questions arising under the Code of Professional Responsibility.**