

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 88-25

Issued December 16, 1988

[Withdrawn by Board on Dec. 5, 1997 due to amended DR 7-107, eff. Jan. 1, 1996]

SYLLABUS: Under DR 7-107(A), a lawyer who is participating in or associated with an investigation of a criminal matter shall not make any statements regarding the investigation that a reasonable person would expect to be disseminated by means of public communication. Completed criminal investigations should not be included in that restriction. Therefore, DR 7-107(A) does not preclude a prosecuting attorney from explaining why a criminal charge has not been authorized when a criminal investigation has been completed.

OPINION: We have before us your request for an advisory opinion on whether DR 7-107(A) of the Code of Professional Responsibility applies to a prosecuting attorney explaining why a criminal charge has not been authorized upon completion of a criminal investigation.

DR 7-107(A) states that “[a] lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication... .” This Code provision applies to prosecutors who are participating in or are associated with investigating a pending criminal matter. However, it is our opinion that DR 7-107(A) does not apply to completed criminal investigations. Therefore, a prosecutor is not prohibited from explaining why a criminal charge has not been authorized once the criminal investigation has been completed. We do however, caution prosecutors not to issue statements on investigations of which the public is unaware.

In conclusion, it is our opinion and you are so advised that a prosecutor is subject to DR 7-107(A) in pending matters, but that the Rule does not apply to completed criminal investigations. A prosecutor is, therefore, permitted to explain why a criminal charge has not been authorized upon completion of the criminal investigation.

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