

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

## **OPINION 2005-1**

Issued February 4, 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***[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]***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:** An attorney who performs research and writing on a contract basis to other attorneys, but who is not engaged by, does not meet with, and does not offer advice to clients is not considered to be engaged in the practice of law and is not subject to the professional liability insurance notice requirements of DR 1-104.

**OPINION:** This opinion addresses the applicability of professional liability insurance notice requirements in the Ohio Code of Professional Responsibility to attorneys who provide legal research and writing to other attorneys on a contract basis.

Is an attorney who performs research and writing on a contract basis to other attorneys subject to the disciplinary rule requirements regarding notice of professional liability insurance?

Since July 1, 2001, Ohio attorneys are required to either maintain professional liability insurance or provide written notice to clients that professional liability insurance is not maintained. The rule, with its notice requirement, is set forth in full below.

### **DR 1-104. DISCLOSURE OF INFORMATION TO THE CLIENT.**

- (A) A lawyer shall inform a client at the time of the client's engagement of the lawyer or at any time subsequent to the engagement if the lawyer does not maintain professional liability insurance in the amounts of at least one hundred thousand dollars per occurrence and three hundred thousand dollars in the aggregate or if the lawyer's professional liability insurance is terminated. The notice shall be provided to the client on a separate form set forth following this rule and shall be signed by the client.
- (B) A lawyer shall maintain a copy of the notice signed by the client for five years after termination of representation of the client.
- (C) The notice required by division (A) of this rule shall not apply to a lawyer who is engaged in either of the following:

- (1) Rendering legal services to a governmental entity that employs the lawyer;
- (2) Rendering legal services to an entity that employs the lawyer as in-house counsel.

**NOTICE TO CLIENT**

Required by DR 1-104

Ohio Code of Professional Responsibility

Pursuant to DR 1-104 of the Ohio Code of Professional Responsibility, I am required to notify you that I do not maintain professional liability (malpractice) insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate.

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Attorney's Signature

**CLIENT ACKNOWLEDGEMENT**

I acknowledge receipt of the notice required by DR 1-104 of the Ohio Code of Professional Responsibility that [insert attorney's name] does not maintain professional liability (malpractice) insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate.

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Client's Signature

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Date

Under DR 1-104(C)(1) and (2), there are two stated exceptions to the rule. The notice requirement does not apply to a government lawyer (a lawyer who is engaged in rendering legal services to a government entity that employs the lawyer) or to in-house counsel (a lawyer who renders legal services to an entity that employs the lawyer as in-house counsel).

The professional liability insurance notice requirements of DR 1-104(A) apply to attorneys who are engaged by clients to provide legal services. The rule is not applicable to attorneys who provide legal research and writing to other attorneys on a contract basis, but who are not engaged by, do not meet with, and do not offer advice to clients. “[A] legal research and writing service exclusively for lawyers and law firms is not considered the practice of law.” Ohio Sup.Ct., Bd. Commrs. Grievances & Discipline, Op. 88-018 (1988).

In conclusion, the Board advises that an attorney who performs research and writing on a contract basis to other attorneys, but who is not engaged by, does not meet with, and does not offer advice to clients is not considered to be engaged in the practice of law and is not subject to the professional liability insurance notice requirements of DR 1-104.

**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.**