

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 90-9

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[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]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: A lawyer should not concurrently represent a client as a lawyer and a realtor. Fees for legal services must comply with DR 2-106.

When engaged in a profession or business other than the legal profession a lawyer may not identify himself or herself as a lawyer on his or her letterhead, office sign, or professional card, or be identified as a lawyer in any professional or business publication in connection with a nonlegal profession or business. Code of Professional Responsibility, DR 2-102 (E).

A lawyer is bound by the Code whether acting in his or her professional capacity or otherwise. A lawyer representing the personal representative of an estate may not also perform the customary services of a realtor in selling the estate property. The Code does not prohibit a lawyer from sharing office space with a private business as long as the attorney complies with the applicable disciplinary rules.

OPINION: We have before us your request for an advisory opinion regarding your dual status as a lawyer and a licensed real estate agent. You indicate your compensation as a realtor will be a percentage of the sale price of the property payable at the closing. Your questions are as follows.

1. Is there a conflict of interest prohibiting the attorney from representing a given seller or buyer in a real estate transaction both as their attorney and realtor?

A lawyer shall not accept employment if the exercise of his or her professional judgment may be affected by the lawyer's own financial business, property, or personal interests except with the consent of the client after full disclosure. Code of Professional Responsibility, DR 5-101(A). In this case, a lawyer's professional judgment may be affected by the lawyer's own financial interest as a realtor. Therefore, a lawyer should not represent a client as both lawyer and realtor unless the client consents after full disclosure of all the conflicting interests.

A lawyer is also precluded from recommending his or her legal services to a non-lawyer who has not sought the lawyer's advice. Code of Professional Responsibility DR 2-103(A). Therefore, as a realtor, a lawyer may not recommend his or her legal services to any real estate clients. Similarly, a lawyer may not request the real estate firm to recommend or promote his or her legal services. Code of Professional Responsibility, DR 2-103(C). In other words, the real estate practice may not be used as a feeder for the law practice. For these reasons, we do not recommend the dual representation as lawyer and realtor for one client.

2. When an attorney represents a buyer or seller as an attorney and realtor or, as one but not the other, what ethical obligations are relevant to the fee agreement with the buyer or seller?

All legal fees must comply with DR 2-106 which states that a lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee. Code of Professional Responsibility, DR 2-106.

3. May an attorney show on his letterhead, business card, or public advertising that he is also a "real estate associate" or "realtor"?

A lawyer who is engaged in the practice of law and another profession or business shall not so indicate on his or her letterhead, office sign, or professional card. Code of Professional Responsibility, DR 2-102 (E). A lawyer may not be identified as engaged in another profession or business in any publication in connection with the profession or business. Id. The Code therefore, does not permit a lawyer from indicating on his or her letterhead, business card, or in public advertising that the lawyer is also a "real estate sales associate" or "realtor."

In a prior opinion we noted that DR 2-102(E) is arguably inconsistent with the other Disciplinary Rules relating to advertising. Board of Commissioners Op, 88-23 (1988). However, DR 2-102 (E) remains a part of the Code and prohibits a lawyer from printing a dual practice on his or her letterhead, office sign or professional card.

4. Is an attorney, while acting as a realtor only, held to the standards of the Code of Professional Responsibility, even though a realtor is prohibited by Ohio law from engaging in the practice of law?

A lawyer, whether acting in his or her professional capacity or otherwise, is bound by applicable disciplinary rules of the Code of Professional Responsibility. ABA Committee on Ethics and Professional Responsibility Formal Op, 336 (1974). Therefore, a lawyer would be bound by the Code while acting as a realtor.

5. Are non-legal files kept at the real estate office considered confidential under DR 4-101.

A realtor's files are not subject to the Code's confidentiality rules if no attorney-client relationship has been established. When an attorney-client relationship is established all the files and information obtained in the legal representation would be confidential under DR 4-101.

6. May an attorney representing the personal representative of an estate receive a commission for acting as a realtor and performing such customary services of a realtor in selling estate property?

A lawyer is obligated to exercise his or her professional judgment solely on behalf of his or her clients. A lawyer may not concurrently represent the personal representative of an estate, receive a commission for acting as a realtor and perform the customary services of a realtor in selling the estate property. Such a dual capacity would be a conflict of interest as well as create the appearance of impropriety. Code of Professional Responsibility, Canon 9.

7. May an attorney operate his legal practice and real estate brokerage out of the same office?

Disciplinary Rule 3-103(A) states that "[a] lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of law." The Code does not prohibit a lawyer from sharing office space with a private business. However, a lawyer operating his or her legal practice and real estate brokerage out of the same office may have difficulty keeping the two practices separate. Furthermore, a lawyer is also prohibited from indicating another business on an office sign. Code of Professional Responsibility, DR 2-102(E).

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