

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 90-14

Issued August 17, 1990

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]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: Under DR 2-108 (A), a lawyer may not be a party to or participate in a partnership or employment agreement with another lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as a condition of payment of retirement benefits. Such restrictive covenants unduly limit the freedom of clients to choose a lawyer.

OPINION: We have before us your request for an advisory opinion on whether your firm and members of your firm may participate in a non-competition agreement, which you included in your letter.

Disciplinary Rule 2-108 (A) clearly prohibits any type of restrictive covenant or non-competition agreement for use in partnership or employment agreements. The rule states "[a] lawyer shall not be a party to or participate in a partnership or employment agreement with another lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as a condition of payment of retirement benefits." Code of Professional Responsibility, DR 2-108 (A). The Commentary to Model Rule 5.6, although not adopted in Ohio, states that restrictions on lawyers after leaving a firm "not only limit their professional autonomy but also limit the freedom of clients to choose a lawyer."

Furthermore, restrictive covenants or non-competition agreements among lawyers may lead to the bartering of clients. ABA/BNA Lawyer's Manual on Professional Conduct 51:1201 (1984). As lawyers, we must preserve a client's freedom to employ counsel of his or her choice. This freedom outweighs a lawyer's interest in being protected against potential competition for clients. *Id.* (citation omitted).

Restrictive covenants are permitted when entered into as a condition of payment of retirement benefits. Typically, these agreements require forfeiture or suspension of retirement benefits if the lawyer engages in competing employment.

In conclusion, it is our opinion and you are so advised that participation of a lawyer in a non-competition agreement would be a violation of DR 2-108.

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